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Thomas E. Clifford, Ph.D.
Cabinet Secretary

July 19, 2013

BY EMAIL AND OVERNIGHT COURIER

Maurice Jones, Deputy Secretary
Office of the Secretary
U.S. Department of Housing and Urban
Development
451 7th Street S.W.
Washington, DC 20410

Mark Johnston, Assistant Secretary
Office of Community Planning and
Development
U.S. Department of Housing and Urban
Development
451 7th Street S.W.
Washington, DC 20410

***RE: Threat by New Mexico Office of Community Planning and Development to
Limit the Availability of Funds under Existing CDBG and NSP Grants to New
Mexico without a Hearing***

Dear Deputy Secretary Jones and Assistant Secretary Johnston:

The New Mexico Office of Community Planning and Development (NMCPD) has threatened to take unilateral action to limit the availability of payments to New Mexico under fully approved Community Development Block Grant (CDBG) and Neighborhood Stabilization Program (NSP) grants to solely non-administrative activities without providing New Mexico with proper notice and the opportunity for a hearing, as required by 42 U.S.C. § 5311(a) and 24 C.F.R. § 570.496. We are writing to:

- bring this threat to your attention;
- respectfully request assurances from you that the U.S. Department of Housing and Urban Development (HUD) will not allow this unilateral action to be taken on August 1, 2013; and
- request your assistance in helping NMCPD and New Mexico to productively and professionally work through the issues that NMCPD claims are unresolved.

Background. On May 9, 2013, NMCPD sent me the results of a monitoring review by U.S. mail only, which my office received on May 14. The review contained four findings and three areas of concern. On June 10, 2013, I responded to the review by both contesting certain findings as well as submitting plans for specific corrective actions. (My June 10, 2013 letter is also enclosed.) In my June 10 response, I specifically noted that limiting the availability of payments to New Mexico under existing CDBG and NSP grants to non-administrative costs required notice and an opportunity for a hearing. In addition, in contesting Finding Nos. 3 and 4, I:

- noted the lack of specific standards as well as the lack of specific facts establishing a violation of the non-identified standards;
- demonstrated that New Mexico had timely obligated and announced CDBG funds to units of general local government (UGLG(s));
- reiterated a prior request for documentation evidencing alleged citizen complaints; and

- requested that NMCPD identify, in writing, every instance of a grant agreement amendment or payment delay resulting either:
 - in a UGLG going “without payment for months or not be[ing] able to close a project timely”; or
 - a UGLG being put “in a financial bind.”

On July 10, 2013, I received a letter dated July 8, 2013 from NMCPD, which states that “as of August 1, 2013, we are putting a hold on the administrative funding.” This was based upon the conclusion that New Mexico had insufficiently contested Finding Nos. 3 and 4 in the May 9 review.

The July 8, 2013 letter fails to provide notice of the opportunity for a hearing, as required by 24 C.F.R. § 570.496(d)(1). It also fails to identify the basis upon which NMCPD determined that New Mexico failed to comply with applicable statutory and regulatory provisions “in a manner which is adequate to allow the respondent to prepare its response”, as required by 24 C.F.R. § 570.496(d)(1)(i). Basic questions remain unanswered, such as:

- How quickly must New Mexico respond to NMCPD’s request for information in order for NMCPD to consider New Mexico responsive?
- How much time may elapse between the submission of requests for payment and the processing of those payments?
- What payments have violated this standard?

New Mexico is clearly entitled to this information, without which it cannot adequately prepare a response.

New Mexico is entitled to a hearing before payments are limited to non-administrative activities. According to the July 8, 2013 letter, as of August 1, 2013, payments to New Mexico will be limited to non-administrative activities, based upon NMCPD’s purported findings that New Mexico’s administration of the CDBG program has failed to comply with applicable statutory and regulatory requirements. Under the plain meaning of 42 USC. § 5311(a) and 24 C.F.R. § 570.496(b), New Mexico is entitled to a hearing before NMCPD avails itself of this remedy, which could have significant and detrimental impacts on the State’s ability to administer the CDBG and NSP programs.

42 USC § 5311(a) provides, in part, as follows:

If the Secretary finds **after reasonable notice and opportunity for hearing** that a recipient of assistance under this chapter has failed to comply substantially with any provision of this chapter, the Secretary, until he is satisfied that there is no longer any such failure to comply, shall—

...

(3) limit the availability of payments under this chapter to programs, projects, or activities not affected by such failure to comply.

(Emphasis added).

24 C.F.R. § 570.496(b) is to the same effect. It provides, in part, as follows:

(b) Remedies. (1) If HUD finds **after reasonable notice and opportunity for hearing** that a State or unit of general local government has failed to comply with

any provision of this subpart, until HUD is satisfied that there is no longer failure to comply, HUD shall:

...

(iii) Limit the availability of payments to the state to activities not affected by the failure to comply or to activities designed to overcome the failure to comply

(Emphasis added.)¹ See also 24 C.F.R. § 85.43(b) (“In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding **to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.**”) (emphasis added).

NMCPD’s efforts to justify the lack of a hearing do not address the statute and regulation cited above. The July 8, 2013 letter provides:

As a consequence, as authorized by 24 CFR 570.495, we are hereby notifying DFA/LGD that as of August 1, 2013, we are putting a hold on the administrative funding. This hold will stay in place until such time as the DFA/LGD adequately addresses the findings cited in the review, as well as provide HUD with the requested plan with remediation of issues noted in the review.

Since HUD at this time is not reducing any grant nor taking punitive actions with respect to dollar amounts of any grant, a hearing is not warranted...

In addition to not citing applicable law, the July 8 letter is not well founded for the following reasons.

First, the threatened action is not authorized by 24 C.F.R. § 570.495. As relevant here, 24 C.F.R. § 570.495(a)(3) authorizes HUD to “advise the state to suspend or terminate disbursement of funds for a deficient activity or grant.” NMCPD was not advising New Mexico to stop spending administrative funds. Rather, it was threatening to affirmatively limit the availability of payments to non-administrative activities. When HUD purports to avail itself of that remedy, notice and an opportunity for a hearing before an independent administrative law judge are required by 42 U.S.C. § 5311(a) and 24 C.F.R. § 570.496. NMCPD’s apparent interpretation of the applicable regulations would render 42 USC § 5311(a) and 24 C.F.R. § 570.496 meaningless. In other words, under NMCPD’s apparent interpretation, HUD could always terminate payments or limit payments under fully executed grants without ever providing proper notice and an opportunity for a hearing simply by “advising” a State to stop making the payments.

Second, contrary to the assertion in the July 8 letter, the threatened action is punitive. If NMCPD is allowed to unilaterally limit payments to non-administrative activities, New Mexico would be deprived of the right to administrative funds based upon NMCPD’s purported finding that it did not comply with applicable statutory and regulatory provisions in the past. This is punitive, under the ordinary and usual meaning of that word. Black’s Law Dictionary (6th Ed. 1990) defines punitive as “[r]elating to punishment; having the character of punishment or

¹ Likewise, conditioning, after the fact, the use of funds under fully approved grants upon the State taking corrective action requires notice and an opportunity for a hearing under 24 C.F.R. § 570.496(b)(iv).

penalty; inflicting punishment or a penalty.” Punishment, in turn, is defined as an action taken “for some crime or offense committed by [a person], or for [the person’s] omission of a duty enjoined by law.”

Third, NMCPD’s apparent interpretation ignores that Congress enacted 42 U.S.C. § 5311(a) to provide procedural due process protections to grant recipients. In *City of Kansas City, Missouri v. U.S. Department of Housing and Urban Development*, 861 F.2d 739, 745 (D.C. Cir. 1988), the D.C. Circuit Court of Appeals explained that due process concerns underlie the proper interpretation of 42 U.S.C. § 5311(a) in the context of grant agreements that have been finally approved and under which the payment of funds has begun, holding:

We are particularly mindful of the importance of giving effect to [42 U.S.C. § 5311] in light of the due process rights involved. As this court has noted, “[i]n most cases, Congress has been silent on the question of a grantee’s procedural rights when an agency decides to terminate some or all of its federal grant.” When, as in this case, Congress has not been silent, a court has a special obligation to ensure that the agency does not “end-run the clear procedural protections which Congress provided.”

(Internal citations and footnote omitted.). See also *id.* at 744 (“[w]hen a statute dictates that parties receive notice and a hearing ... the provision of those basic procedural rights is not left to be decided by administrative ‘flexibility’ or ‘discretion[.]’”) (internal quotations omitted); *City of Boston v. U.S. Department of Housing and Urban Development*, 898 F.2d 828, 832 (1st Cir. 1989) (opining that “the words terminate, reduce or limit [in 42 U.S.C. § 5311(a)] should be given a broad, common-sense reading, not a constricted one”).

Limiting Payments to Non-Administrative Activities Would Have a Significant and Detrimental Impact on the Administration of New Mexico’s CDBG and NSP Programs and Hamper New Mexico’s Ability to Take Any Corrective Action That May be Warranted. CDBG and NSP administrative funds are used to pay, in whole or in part, the salaries of approximately 14 positions that administer the CDBG and NSP programs at the New Mexico Department of Finance and Administration (DFA). Without this funding, DFA (i) will not be able to fill vacant positions and (ii) may have to consider undertaking a reduction in force; that is, potentially lay off employees in filled positions paid with CDBG and NSP administrative funds. Focusing on some of NMCPD’s specific concerns, terminating all administrative payments will likely limit New Mexico’s ability to process requests for payment from UGLGs, an area in which NMCPD criticized New Mexico (without providing specific facts and documentation supporting that criticism). It will also preclude the State from addressing the vacancies caused by employee turnover, another area in which NMCPD has noted concerns.

The proposed remedy also appears inconsistent with 24 C.F.R. § 570.496(b)(1)(iii). That section suggests that HUD should continue to fund “activities designed to overcome the failure to comply”.

Request for Assurances that HUD will not Limit Payments to Non-Administrative Activities without Proper Notice and an Opportunity for a Hearing. We would respectfully request that you provide written assurances that HUD will follow 42 USC § 5311(a) and 24 C.F.R. § 570.496 before limiting the availability of payments under fully approved CDBG and NSP grants to non-administrative activities. So as to allow New Mexico adequate time to

consider its legal and other options to respond to the potential loss of administrative funds as of August 1, 2013, we would respectfully request such assurances as soon as possible but in no event later than *12:00 p.m. EDT on Wednesday, July 24.*

Request for Assistance in Professionally and Productively Working Through Issues Allegedly Outstanding. We will be separately providing NMCPD with a detailed, written response to the July 8, 2013 letter, which will include additional matters not addressed in this letter. In addition, we will continue to strive to work professionally and productively with NMCPD and to improve our administration of the CDBG and NSP programs, even in those cases where our current performance meets established standards. The tenor of NMCPD's previous letters, however, suggests that the issues it believes to be unresolved might be more effectively addressed with the participation of HUD personnel from outside the NMCPD. We would welcome that participation.

* * *

New Mexico greatly appreciates your time and consideration regarding this matter. My office will be following up with yours to see whether a telephone conference or other meeting would help move resolution of these issues forward. In addition, you should also not hesitate to call me at 505.827.4985.

Respectfully,



Thomas E. Clifford, Ph.D.
Secretary of Finance and Administration

cc: Honorable Susana Martinez, Governor
Honorable Thomas Udall, United States Senator
Honorable Martin Heinrich, United States Senator
Honorable Ben Ray Lujan, United States Representative
Honorable Michelle Lujan Grisham, United States Representative
Honorable Steve Pearce, United States Representative
David A. Montoya, HUD Inspector General
Helen R. Kanovsky, HUD General Counsel
Frances Bush, HUD Deputy Assistant Secretary for Operations
Renee Ryles, Acting Director, HUD Office of Field Management
Frank Padilla, Director, New Mexico Office of Community Planning and Development
New Mexico Community Development Council



U.S. Department of Housing and Urban Development

500 Gold Avenue SW, Suite 7301
PO Box 906
Albuquerque, NM 87103-0906

NEW MEXICO
OFFICE OF COMMUNITY PLANNING AND DEVELOPMENT

505.346.7271
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May 9, 2013

Mr. Tom Clifford, Cabinet Secretary
Department of Finance and Administration
The State of New Mexico
Office of the Secretary
180 Bataan Memorial Building
Santa Fe, NM 87501

RECEIVED

MAY 14 2013

DFA
OFFICE OF THE SECRETARY

Subject: The State of New Mexico 2013 CDBG and NSP Monitoring Review

Dear Secretary Clifford:

Commencing on April 2, 2013, we performed a monitoring review of the State of New Mexico Department of Finance & Administration, Local Government Division (DFA/LGD). The purpose of the review was to evaluate DFA/LGD's performance in administering the Community Development Block Grant (CDBG) and Neighborhood Stabilization Program (NSP) grant programs.

HUD reviewed DFA/LGD compliance with 24 CFR 570. This included overall program management, including national objective and eligibility, financial management, and Colonias. An additional review was performed on the NSP1 and NSP3 programs. We evaluated the State's performance in administering the NSP grant program and to determine compliance with NSP1 regulations at 73 FR 58330, revisions to these regulations in the NSP Bridge Notice, and compliance with NSP3 regulations at 75 FR 64322.

Following the review, the results of the on-site review were discussed and presented at the exit conference on May 06, 2013. The results of the review are outlined in the enclosed report. A Finding is a deficiency in meeting applicable regulatory or statutory requirements. A Concern is a performance problem or deficiency. The review resulted in four findings and three concerns.

DFA/LGD must provide HUD with specific timeframes and dates with a plan of action as to how the State will comply with all required corrections as outlined in this monitoring review report. Failure to provide HUD with this plan will result in the immediate withholding of all administrative funding until such time as the State responds to HUD's satisfaction. This is in accordance with 24 CFR 570.495(a)(1) and 24 CFR 570.496(b)(i).

If you have any questions, please contact me at [REDACTED]

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'S' followed by a horizontal line extending to the right.

Frank Padilla
Director

Enclosures

cc: Honorable Susana Martinez, Governor of New Mexico
Community Development Council

**STATE OF NEW MEXICO - LOCAL GOVERNMENT DIVISION
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)
NEIGHBORHOOD STABILIZATION PROGRAMS 1 AND 3 (NSP1, NSP3)
2013 HUD MONITORING REVIEW**

REVIEW SCOPE

The monitoring review focused on the following program areas: (1) Overall Program Management, (2) Financial Management, and; (3) Colonias.

OVERALL PROGRAM MANAGEMENT

During the 2013 review the State was monitored for compliance with the CDBG Program regulations at 24 CFR 570, including National Objective and Eligibility Compliance. The State was also monitored for compliance with NSP1 regulations at 73 FR 58330, revisions to these regulations in the NSP Bridge Notice, and compliance with NSP3 regulations at 75 FR 64322. The following files were reviewed during the monitoring visit:

CDBG 2011 Projects:

1. City of Deming, IDIS Activity 7790, \$425,000
2. Town of Mesilla, IDIS Activity 7833, \$400,000
3. Guadalupe County, IDIS Activity 7842, \$500,000
4. San Miguel County, IDIS Activity 7844, \$334,790.21
5. Village of Fort Sumner, IDIS Activity 7850, \$450,000
6. DeBaca County, IDIS Activity 7851, \$449,999.49
7. City of Portales, IDIS Activity 7852, \$391,901.43
8. City of Carlsbad, IDIS Activity 7860, \$300,000

CDBG 2012 Projects:

1. City of Lordsburg, IDIS Activity 8166, \$422,000
2. Town of Taos, IDIS Activity 8221, \$480,000
3. Village of Loving, IDIS Activity 8226, \$422,000
4. Village of Mosquero, IDIS Activity 8277, \$388,187.68

On-Site Review:

1. Village of Fort Sumner

NSP1 and NSP3 files were also reviewed at the Local Government Division:

FINANCIAL MANAGEMENT

The Local Government Division was monitored for compliance with OMB Circular A-87 Cost principles for State and Local Governments, OMB Circular A-102 Grants and Cooperative Agreements with State and Local Governments, OMB Circular A-133 Audits of States, Local Governments, and Non-Profit Organizations, Treasury regulations at 31 CFR 205, Federal awarding agency regulations, and the terms and conditions of the award. Financial reporting, accounting records, cost allowability, and source documentation were reviewed. Support

documentation serving as backup for expenditures were reviewed in selected project files. HUD has requested the Technical Assistance budget and general ledger documentation, and we are still waiting for this information.

COLONIAS

The following Colonias files were reviewed during the monitoring visit:

1. City of Lordsburg, IDIS Activity 8166, \$422,000
2. Village of Loving, IDIS Activity 8226, \$422,000

FINDINGS

Finding 1

The State of New Mexico was negligent in its oversight and failed to meet Office of Management and Budget (OMB) requirements, Treasury regulations, and HUD regulations for Cash Management.

Condition:

The New Mexico Mortgage Finance Authority (MFA) returned \$13,534.96 in unused CDBG funds back to the State of New Mexico in November 2010. Upon review, HUD determined that these funds were not returned to HUD.

Criteria:

OMB Circular A-102 Paragraph 2.a.-Cash Management

Agency methods and procedures for transferring funds shall minimize the time elapsing between the transfer to recipients of grants and cooperative agreements and the recipient's need for the funds.

OMB Circular A-110 SUBPART C - Post-Award Requirements, Financial and Program Management .22 Payment.

(a) Payment methods shall minimize the time elapsing between the transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payment by other means by the recipients. Payment methods of State agencies or instrumentalities shall be consistent with Treasury-State CMIA agreements or default procedures codified at 31 CFR part 205.

Cash Management Improvement Act (CMIA), H.R.4279 - Section. 3335 - Timely disbursement of Federal funds.

(a) Each head of an executive agency (other than the Tennessee Valley Authority) shall, under such regulations as the Secretary of the Treasury shall prescribe, provide for the timely disbursement of Federal funds through cash, checks, electronic funds transfer, or any other means identified by the Secretary.

31 CFR 205.33 How are funds transfers processed?

(a) A State must minimize the time between the drawdown of Federal funds from the Federal government and their disbursement for Federal program purposes. A Federal Program Agency must limit a funds transfer to a State to the minimum amounts needed by the State and must time the disbursement to be in accord with the actual, immediate cash requirements of the State in carrying out a Federal assistance program or project. The timing and amount of funds transfers must be as close as is administratively feasible to a State's actual cash outlay for direct program costs and the proportionate share of any allowable indirect costs. States should exercise sound cash management in funds transfers to subgrantees in accordance with OMB Circular A-102 (For availability, see 5 CFR 1310.3.).

24 CFR 570.494 Timely distribution of funds by states.

(b) HUD will review each state to determine if the state has distributed CDBG funds in a timely manner. The state's distribution of CDBG funds is timely if:

(2) Recaptured funds and program income received by the state are expeditiously obligated and announced to units of general local government.

Cause:

Lack of oversight on part of DFA/LGD regarding cash management.

Effect:

The returned funds were not redistributed in a timely manner. Therefore the primary purpose of the CDBG program, to develop viable urban communities by providing decent housing, a suitable living environment, and expanding economic opportunities, principally for persons of low- and moderate-income, was not met with these funds.

Corrective Action:

DFA/LGD must immediately return these funds to the U.S. Treasury.

Finding 2

The State of New Mexico has been untimely in distributing program income.

Condition:

The City of Albuquerque generated \$1,526,506.58 in NSP program income, and has not been able to utilize the program income funds for 18 months due to the untimely distribution by the DFA/LGD. On November 7, 2011, March 14, 2012 and September 11, 2012 the City requested the use of program income again. On August 31, 2012 the City of Albuquerque requested the use of program income for the Atrisco Properties. On December 4, 2012 the DFA/LGD informed the City of Albuquerque they had approved the City of Albuquerque to use program income for the Atrisco Property. Over a year later on January 29, 2013 DFA/LGD advised the City of Albuquerque they would issue an amendment electronically with a hard copy to follow for the use of Program Income after the submitted a "Substantial Amendment" to the State of New Mexico in order to process the amendment; in addition, the State of New Mexico reduced Administrative funds from 7% to 5%. On February 12, 2013 the City of Albuquerque requested DFA/LGD consider increasing admin to 7% as originally funded. On March 19, 2013 DFA/LGD informed the City of Albuquerque they would approve 6% Administrative funds of Program

Income. However, the City of Albuquerque needed to submit a "Substantial Amendment."

In addition, NSP Contractor Kaspia sent a budget amendment request to the State of New Mexico on January 29th, 2013 in order to proceed with the purchase and rehabilitation of homes using NSP program income funds. To date, DFA/LGD has not provided an adequate response to Kaspia, nor has it amended the budget to allow Kaspia to proceed, which has caused undue hardship to this small firm and homebuyers.

Criteria:

24 CFR 570.494 Timely distribution of funds by states.

(b) HUD will review each state to determine if the state has distributed CDBG funds in a timely manner. The state's distribution of CDBG funds is timely if:

(2) Recaptured funds and program income received by the state are expeditiously obligated and announced to units of general local government.

Cause:

The review process the State of New Mexico has in place, which requires the legal division to review all contract and amendments, is inefficient and has caused undue delays in the review and execution of contracts and amendments.

Effect:

Since no one benefits from CDBG funds until specific activities are underway or completed, states must distribute the funds in a timely manner in order to benefit low- and moderate-income people. The distribution requirements allow states a reasonable time to administer the program while assuring that the funds are used as Congress intended. The CDBG statutory and regulatory requirements apply to NSP programs unless specifically waived by the NSP regulations. The Housing and Economic Recovery Act of 2008 was created as Emergency Assistance for the redevelopment of abandoned and foreclosed homes. Program Income funds are not being distributed timely, therefore, the funds are not being used as Congress intended.

Required Corrective Action:

DFA/LGD cannot require a "Substantial Amendment" to be completed by the City of Albuquerque, since a Substantial Amendment by HUD definition is a document that is used to amend the Consolidated Plan and Subsequent Annual Action Plans when the requirements of 24 CFR 91.505 have been triggered. Therefore, DFA/LGD must work with the City of Albuquerque to submit a budget request in accordance with the Grant Agreement Amendment #3, number 4 (between DFA/LGD and the City of Albuquerque). Grant Agreement Amendment #3, number 4 states "Any proposed changes to the budget by the Grantee to the budget established in the DRGR, from the effective date of this Amendment until the date of termination, shall only be permitted as follows: 1) the Grantee submits a formal written request to DFA by mail in accordance with Article XV of the Original Grant Agreement, including the old budget, new budget, and activity sheet and 2) the request is approved by DFA and HUD in writing." Therefore, HUD is requiring DFA/LGD to issue a Program Income Amendment in accordance with its own requirements outlined in Grant Agreement Amendment #3. The Program Income Amendment must be issued within the next 30 days and a copy of the amendment must be provided to HUD.

If we do not receive a satisfactory written response within 30 days, with specific timeframes and dates for the required actions, HUD will withhold all administrative funding until such time as the State responds to HUD's satisfaction. This is in accordance with 24 CFR 570.495(a)(1) and 24 CFR 570.496(b)(i).

Finding 3

The State of New Mexico has not been responsive to HUD.

Condition:

The Local HUD office has contacted DFA/LGD multiple times during the past year and requested timelines for the Neighborhood Stabilization Programs and for the Community Development Block Grant Section 108 Loan Guarantee program (Section 108) in order to determine timely distribution of funds. DFA/LGD has either responded with an unsatisfactory answer to HUD or has not provided a response to the Local HUD office. This office has worked with DFA/LGD for over 15 years, with mutual respect and excellent working relationship. HUD has never experienced the lack of responsiveness and insolence manifested by current DFA/LGD management. If this relationship is to improve, DFA/LGD must comply with all requests and inquiries made by HUD staff.

October 19, 2012, HUD advised DFA/LGD that HUD did not believe the State of New Mexico had capacity to continue to administer the NSP programs due to lack of response/oversight of subrecipients. On November 9, 2012, DFA/LGD responded to HUD that they were aware of the issues and concerns raised in HUD's letter. On December 11, 2012 HUD notified DFA/LGD that there were still several issues with the NSP programs, and that HUD was still concerned with the administrative capacity in being able to administer the NSP programs. On December 18, 2012 HUD requested a timeline as to the use of program income for the City of Albuquerque and a timeline as to when NSP programs would be transferred to MFA, if the DFA/LGD chose to do so. On December 31, 2012 the DFA/LGD responded to HUD by stating "I cannot give a specific timeframe for resolving all these issues." On April 5, 2013 HUD requested a status of the NSP Programs in regards to the use of program income and the program income amendment. As of May 1, 2013 DFA/LGD has not responded to HUD in regards to the status of the NSP programs or the use of Program income for the City of Albuquerque.

On March 1, 2013 HUD contacted DFA/LGD and requested a timeline as to when they would be sending the signed Section 108 loan agreement and the special conditions that are contained in the funding agreement between HUD. HUD requested the timeline to be provided no later than March 15, 2013. On March 15, 2013 DFA/LGD responded to HUD that a timeline was not available and HUD would receive the timeline on March 20, 2013. On March 20, 2013, the DFA/LGD had not provided HUD with the required timeline. HUD notified DFA/LGD that they had to provide the timeline to HUD no later than March 22, 2013. On April 8, 2013 HUD still had not received the requested a status in regards to the Section 108 program and requested a status in regards to the timeline. As of May 1, 2013 the DFA/LGD still has not responded to HUD.

In addition, on February 1, 2013 HUD was informed that the Section 108 Environmental Review

for RITech Global would be sent to HUD by the middle of March after the comment period. On March 20, 2013 HUD requested a status as to when HUD could expect the Environmental Review for the Section 108 program. As of April 29, 2013 DFA/LGD has not responded to HUD in regards to Environmental Review for the Section 108 program.

Criteria:

24 CFR 570.493- HUD's reviews and audits

(b) *Information considered.* In conducting performance reviews and audits, HUD will rely primarily on information obtained from the state's performance report, records maintained by the state, findings from on-site monitoring, audit reports, and the status of the state's unexpended grant funds. HUD may also consider relevant information on the state's performance gained from other sources, including litigation, citizens' comments, and other information provided by the state. A State's failure to maintain records in accordance with § 570.490 may result in a finding that the State has failed to meet the applicable requirement to which the record pertains.

24 CFR 570.494 - Timely distribution of funds by states.

(c) HUD may collect necessary information from states to determine whether CDBG funds have been distributed in a timely manner.

Cause:

DFA/LGD does not have staff capacity in management position with oversight responsibility for HUD programs.

Effect:

HUD is unable to determine if the State is meeting the requirements under § 24 CFR 570.493 and § 24 CFR 570.494. Since no evidence has been produced by the State of New Mexico, HUD has made the assumption that the State of New Mexico is not distributing funds in a timely manner and does not have the capacity to carry out CDBG and NSP programs.

Required Corrective Action:

Within 30 days, the State of New Mexico must provide the Local HUD office with the following items:

- Activity descriptions for the Section 108 program so that the local HUD can make a written determination of the following: *(i) the activity meets the eligibility requirements of 24 CFR 570.703. (ii) each eligible activity to be undertaken or supported with loan guarantee funds will meet the nation objective requirements of 570.208 and, (iii) the applicable public benefit standards will be met, in accordance with 570.209 (b).*
- Section 108 environmental review for REltech Global LLC.

In addition, within 30 days, the DFA/LGD must provide the Local HUD office with a written determination as to what is happening with the Neighborhood Stabilization Programs. Is DFA/LGD going to continue to administer the Neighborhood Stabilization Programs, or will the programs be transferred to the New Mexico Mortgage Finance Authority? If the programs will be transferred, DFA/LGD must provide HUD with a detailed management plan with a plan

outlining how and by when the transfer will be made.

If we do not receive a satisfactory written response within 30 days, with specific timeframes and dates for the required actions, HUD will withhold all administrative funding until such time as the State responds to HUD's satisfaction. This is in accordance with 24 CFR 570.495(a)(1) and 24 CFR 570.496(b)(i).

Finding 4

HUD has received numerous complaints regarding LGD/DFA's performance in administering HUD grants.

Condition:

The Local HUD office has received twenty three citizen complaints between November 2012 and April 2013 in regards to the State of New Mexico's Community Development Block Grant Program and Neighborhood Stabilization Programs. Citizens have informed HUD that Grant Agreements, Grant Amendments, and Request for Payments are delayed and untimely.

Criteria:

24 CFR 570.493- HUD's reviews and audits

(b) *Information considered.* In conducting performance reviews and audits, HUD will rely primarily on information obtained from the state's performance report, records maintained by the state, findings from on-site monitoring, audit reports, and the status of the state's unexpended grant funds. HUD may also consider relevant information on the state's performance gained from other sources, including litigation, citizens' comments, and other information provided by the state. A State's failure to maintain records in accordance with § 570.490 may result in a finding that the State has failed to meet the applicable requirement to which the record pertains.

Cash Management Improvement Act (CMIA), H.R.4279 - Section. 333 - Timely disbursement of Federal funds.

(a) Each head of an executive agency (other than the Tennessee Valley Authority) shall, under such regulations as the Secretary of the Treasury shall prescribe, provide for the timely disbursement of Federal funds through cash, checks, electronic funds transfer, or any other means identified by the Secretary.

OMB Circular A-102 Section 2A-Cash Management

Agency methods and procedures for transferring funds shall minimize the time elapsing between the transfer to recipients of grants and cooperative agreements and the recipient's need for the funds.

Cause:

The review process the State of New Mexico has in place, which requires the legal division to review all contract and amendments, is inefficient and has caused undue delays in the review and execution of contracts and amendments.

Effect:

Delay in Grant Agreements for Units of General Local Government (UGLG) forced a delay in

the implementation of their CDBG project by missing the window of opportunity for construction, due to weather conditions. Delay in Grant Agreement Amendments has forced UGLG to go without payment for months or not be able to close a project timely. Delay in Grant Agreement Amendments for NSP Programs has caused the programs to be delayed. Delay in Requests for Payment has forced some UGLG to go without payment, putting the UGLG in a financial bind.

Required Corrective Action:

Within 30 days, the State of New Mexico must provide the Local HUD office with written policies and procedures on how the State will eliminate the time elapsing between Grant Agreements, Grant Amendments, and Request for Payments for both the CDBG and NSP Programs. The Request for Payment procedures must be in accordance with the Cash Management Improvement Act of 1990.

Concerns

Concern No. 1

Per State CDBG requirements, all grants must be monitored once a year for the life of the grant. The first monitoring review has to be completed within one year of grant execution. Per review of the DFA/LGD, it was determined that several monitoring reviews were late.

Recommended Action

DFA/LGD needs to ensure that it follows its CDBG monitoring requirements.

Concern No. 2

Review of the NSP3 program revealed that the State of New Mexico is slow in meeting the LH25 requirement which states that "No less than 25 percent of the funds shall be used to house individuals and families whose incomes do not exceed 50 percent of area median income." As of the time of the review the State has 13% toward this requirement, with over 86% of the grant drawn. The grant expires in March 2014.

Recommended Action

DFA/LGD needs to closely monitor this requirement to ensure that it is met.

Concern No. 3

DFA/LGD has lost most of its management staff that has knowledge and experience with HUD programs. Sam Ojinaga who was the Deputy Director of the Local Government Division was removed after 14 years of experience. Dolores Gonzales, Community Development Bureau Chief, is leaving after 16 years of experience. Barbara Romero, Assistant Bureau Chief, is leaving after 9 years of experience.

Recommended Action

It is HUD's opinion that the State of New Mexico DFA/LGD should evaluate its ability to continue to administer the CDBG Section 108 and NSP programs. DFA/LGD was never designed to administer housing programs; that is why the New Mexico State Legislature created the MFA. We therefore strongly recommend that the NSP program be transferred to the MFA.

The MFA presently successfully administers several HUD housing programs, and has indicated their willingness to administer NSP.

Furthermore, the lack of capacity and understanding of economic development on the part of the DFA/LGD has caused serious delays in implementing the Section 108 Program. The State of New Mexico has a very capable and knowledgeable Department of Economic Development that could very easily administer the Section 108 Program. It is our recommendation that the Section 108 program be administered by the Economic Development Department.



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Thomas E. Clifford, Ph.D.
Cabinet Secretary

June 10, 2013

Mr. Frank Padilla
Director
New Mexico Office of Community Planning and Development
U.S. Department of Housing and Urban Development
500 Gold Avenue SW, Suite 7301
PO Box 906
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SUBJECT: Response to 2013 CDBG and NSP Monitoring Review

Dear Mr. Padilla:

This letter is in response to your letter dated May 9, 2013, and attached report ("Report"), concerning the State of New Mexico 2013 Community Development Block Grant ("CDBG") and Neighborhood Stabilization Program ("NSP") Monitoring Review conducted by the United States Department of Housing and Urban Development's ("HUD") New Mexico Community Planning and Development Office ("NMCPD") in early April ("Review"). This response is submitted in accordance with 24 CFR 570.495(a), which allows a state to contest findings as well as submit a plan for corrective action, as appropriate.

The Report identifies four findings and three concerns with the New Mexico Department of Finance and Administration's ("DFA's") administration of the CDBG, NSP, and Section 108 Loan Guarantee Program ("Section 108 Program"). This letter will address in detail the specific contents of the Report. In addition to those detailed responses, I would emphasize the following: (1) DFA takes its responsibilities in connection with the CDBG programs very seriously; (2) We believe we have made a conscientious effort to fulfill our responsibilities, and while we believe some of the issues that have been raised do not accurately characterize our administration of the programs, we are always open to critiques and suggestions as to how we can improve our performance; and (3) The CDBG programs are important examples of federal-state-local cooperation that provide significant benefits to the people of New Mexico. We will continue to work with our partners at HUD and the NMCPD to provide these benefits in an efficient, transparent and cooperative manner.

To provide context for the Review, it is useful to take stock of the status of the CDBG and NSP programs in New Mexico. In addition to other duties, DFA's Local Government Division ("LGD" or "DFA/LGD") is responsible for providing administrative support for the federally-funded CDBG and NSP programs. HUD provides funding to assist with DFA's costs of administering the programs. In addition to the CDBG program itself, DFA has worked closely with NMCPD to implement two new programs over the last several years: NSP and the Section 108 Program. These programs provide important federal resources to the State, supporting

infrastructure, low- and moderate-income housing rehabilitation and economic development financing. DFA takes very seriously its responsibilities for these programs, and we are proud of our successful track record, as evidenced by the following:

- \$65,206,059 of CDBG funds distributed to critical infrastructure projects statewide over the last five years;
- \$20,943,197 of NSP grant funds and \$8,886,635 in program income distributed to fund low- and moderate-income housing rehabilitation over the last five years; and
- Development of the Section 108 Program, including \$20 million of tentative loan awards to two companies, putting the State well ahead of most other states in implementation of this important, but untested, program.

Throughout implementation of these programs we have maintained an excellent track record in terms of compliance with statutory and regulatory deadlines.

The remainder of this letter is divided into two parts. The first explains several concerns DFA has with the process and content of the Review and Report. The second provides specific responses to the Report's Findings and Concerns. A brief set of conclusions follows these sections.

DFA'S GENERAL CONCERNS WITH THE REVIEW PROCESS

1. NMCPD Did Not Follow CDBG Review and Audit Procedure Guidelines

Section 2-7(C)(2) of HUD's CPD Grant Monitoring Handbook ("GMH") provides the following clear guidance regarding the need to communicate during a review:

Communicate! Throughout the monitoring, maintain an on-going dialogue with the program participant. Such communication keeps the participant informed as to how the monitoring is progressing, enables discussions of any problem areas encountered, and provides the participant an opportunity to make "on-the-spot" adjustments or corrections or present additional information to help the HUD reviewer. It also minimizes the potential for surprises to the participant when the exit conference is held as well as when the monitoring results are formally communicated in writing.

During the May 6, 2013 exit briefing with DFA, NMCPD orally presented certain findings and concerns relating to CDBG and NSP programs. NMCPD had not, however, previously communicated many of those findings and concerns to DFA, which precluded DFA from making "on-the-spot" adjustments, resulted in surprise at the exit conference and when the results were formally communicated in writing, and deprived DFA of the opportunity to provide additional information to help the NMCPD reviewer.

DFA was not provided with the details of the findings or a draft of the Report. Rather, the first written documentation DFA received concerning the results of the Review was your May 9 letter, which we received on May 14, 2013, after NMCPD had delivered the report to others using faster, more modern means of delivery.

If NMCPD had followed HUD's own guidance and properly communicated during the monitoring process, DFA would have been able to clarify, prior to the public release of the Report, that all of the purported findings and concerns had been resolved, were being addressed, or are factually unsupported.

I found particularly troubling the following statement in the Report: "that [f]ailure to provide HUD with this plan will result in the immediate withholding of all administrative funding until such time as the State responds to HUD's satisfaction." Withholding payments to the State under existing grants requires notice and an opportunity for a hearing, pursuant to 24 CFR 570.496(b) and (d).

2. NMCPD's Review of DFA Demonstrated a Lack of Auditor Independence

One of NMCPD personnel conducting the Review is a former DFA employee. The GMH and the Government Audit Standards ("GAS") issued by the Comptroller General of the United States, United States Government Accountability Office provide important guidance regarding government audit procedures, which NMCPD did not follow.

Section 2-7 of the GMH, entitled "Conducting the Monitoring," requires a formal letter to be sent to the program prior to monitoring. Among other things, this letter should identify "...the names and titles of the HUD staff conducting the monitoring." The monitoring notification letter received by DFA stated that Monica Gonzales would conduct the Review. However, NMCPD staff who conducted the Review also included Stephanie Herrera (formerly Stephanie Romero). At the exit briefing for the Review, Ms. Herrera gave the impression of serving as the lead auditor for the Review.

Ms. Herrera previously worked for DFA/LGD as a project manager for the CDBG program from October 27, 2008 until October 9, 2012. In addition, she served as the lead project manager overseeing NSP during her tenure at DFA, which ended within months of her work on the Review. Furthermore, Ms. Herrera's husband was employed by DFA from March 16, 2009, to June 1, 2013. During his tenure with DFA, Ms. Herrera's husband has served as a CDBG project manager and was responsible for projects which were reviewed.

The 2011 revision of the GAS is effective for financial audits and attestation engagements for periods ending on or after December 15, 2012, and for performance audits beginning on or after December 15, 2011. According to paragraph 1.19 of the GAS:

The credibility of auditing in the government sector is based on auditors' objectivity in discharging their professional responsibilities. Objectivity includes independence of mind and appearance when providing audits, maintaining an attitude of impartiality, having intellectual honesty, and being free of conflicts of

interest...The concepts of objectivity and independence are closely related. Independence impairments impact objectivity.

The GAS mandates independence in all matters relating to audit work (GAS, Section 3.02). Paragraph 3.05 of the GAS provides:

Except under certain limited circumstances discussed in paragraphs 3.47 and 3.48, auditors should be independent from an audited entity during:

- a. any period of time that falls within the period covered by the financial statements or subject matter of the audit, and
- b. the period of the professional engagement, which begins when the auditors...begin to perform an audit...

Although NMCPD has not defined the time period covered by the Review, it is apparent that Ms. Herrera audited programs for the time period she herself worked on. If we assume that the April 2013 Review covered the previous 12 months, Ms. Herrera worked on the CDBG and NSP programs at DFA during six of those months.¹ Given her recent employment with DFA only months prior to the Review, Ms. Herrera's own work was involved in Findings No. 1 and 2 during her tenure at DFA, meaning she found and cited issues that she herself could have helped create. Based upon the GAS guidelines described above, the assignment of Ms. Herrera indicates a serious absence of independence and objectivity and she should not have been permitted to lead, or even participate in, the Review.

3. NMCPD Has Not Properly Communicated the Time Period Covered and Scope of the Review

Although your letter indicates that the Review commenced on April 2, 2013, neither your letter nor the Report delineates the period of review for purposes of this audit. Not knowing the specific period being audited precludes a complete response.

In addition, the purpose of the Review, as described in your letter and as communicated to DFA staff prior to and during the Review process, does not reference the Section 108 Program (please see the letter from Frank Padilla to Dolores Gonzales dated March 4, 2013, attached as Exhibit A). While the Section 108 Program is technically a component of the CDBG program, the Section 108 Program has not yet been fully implemented in New Mexico. It is unclear why the Report makes recommendations pertaining to the Section 108 Program when it was not expressly included in the Review or in the March 4, 2013 letter giving notice of the Review.

¹ The two previous audits of CDBG and NSP programs were conducted by NMCPD on July 11, 2012 and July 6, 2011.

DFA RESPONSES TO FINDINGS AND CONCERNS

Finding No. 1: The State of New Mexico was negligent in its oversight and failed to meet Office of Management and Budget (OMB) requirements, Treasury regulations, and HUD regulations for Cash Management.

Condition: The New Mexico Mortgage Finance Authority (MFA) returned \$13,534.96 in unused CDBG funds back to the State of New Mexico in November 2010. Upon review, HUD determined that these funds were not returned to HUD.

Response:

DFA agrees that the State was slow in returning \$13,534.96 of unused CDBG funds to HUD. However, this issue was fully resolved prior to NMCPD's making its monitoring report public. DFA transferred the unused grant funds in the amount of \$13,534.96 on April 25, 2013 to HUD. Out of \$36,962,432 of grant funds received from HUD for CDBG between 2010 and 2012, \$13,534.96 represents only 0.037 percent of the total funds received during that time period.

DFA has taken and will be taking the following corrective actions to avoid a repeat of this situation in the future:

- *Timely deposit of checks.* DFA has instituted procedures that require checks to be deposited within 24 hours of receipt.
- *Monthly monitoring of liability balances.* DFA has instituted a requirement that liability balances – i.e., money recorded as being owed to another entity – are monitored monthly. This will prevent lengthy delays in remitting funds due to others.
- *Master Calendar of all CDBG deadlines.* By June 30, 2013, DFA will develop a master calendar that captures all CDBG deadlines. This will allow for better monitoring of all deadlines and progress made toward meeting them.
- *Policies and training regarding recaptured funds and program income.* By July 31, 2013, DFA will develop new policies and training regarding recaptured funds and program income. These will:
 - Educate DFA staff on applicable regulatory requirements;
 - Result in deadlines being calendared on a master calendar; and
 - Require the development of a plan to timely obligate and announce to units of general local government recaptured funds and program income.

Finding No. 2: The State of New Mexico has been untimely in distributing program income.

Condition: Two conditions are cited in the Report. One relates to program income generated by the City of Albuquerque under the NSP-1 program. The second relates to program income generated by DFA's contractor, The Kaspia Group Inc. ("Kaspia"), under the NSP-3 program.

Response:

The Review is unclear about how to measure the amount of time appropriate to determine compliance. The Review states that funds are timely distributed if "... program income funds are expeditiously obligated and announced to units of general local government." Although this language does not contain a specific timeframe, DFA notes that Article II of HUD Notice CPD-13-03, issued April 29, 2013, provides that "Special attention should be directed to program income to ensure that an amount equal to the amount received *each year* is budgeted for and committed to local governments" (emphasis added). We understand this standard to require program income to be budgeted and committed within one year of receipt. The policies being developed concerning recaptured funds and program income will incorporate this one year of receipt standard. NMCPD should immediately let us know if it disagrees that one year of receipt is the standard communicated in CPD-13-03.

In any event, as described below, DFA is working closely with both the City of Albuquerque and Kaspia regarding the distribution of program income funds from both NSP-1 and NSP-3.

NSP-1: City of Albuquerque

Numerous issues, some resulting from input from NMCPD and some outside the control of any of the parties, have contributed to delays in distributing NSP-1 program income. The Report indicates various requests by the City of Albuquerque ("City") to use program income funds from NSP-1 activities. Some of these communications comprise negotiation between DFA and the City regarding the amount of administrative funds available to the City. The report neglects to include other relevant communications and circumstances relating the City's NSP-1 activities over the past few years.

One such communication is a letter from NMCPD's Frank Padilla dated September 26, 2011 in which Mr. Padilla directs DFA to recapture all funds from the City and redistribute such funds to the Mortgage Finance Authority (the letter is attached as Exhibit B). The concern expressed by Mr. Padilla was that "the City did not comply with Federal procurement regulations at 24 CFR 85.36, nor State procurement....The City of Albuquerque proceeded to award nearly \$5,000,000 in phases 2 and 3 of the City NSP1 program without any formal procurement." Because of the concerns raised by NMCPD about the City's operation of the NSP program, DFA proceeded to exercise appropriate due diligence and caution in administering the NSP program with the City. Another situation involved legal disputes between and among the City, the City's contractor (Kaspia, the same contractor DFA uses for NSP-3 activities, which was doing business as Omni at the time), and Kaspia's subcontractor. These issues were settled out-of-court in late 2010 or early 2011. This situation caused additional delays in the use of program income.

Additional circumstances affecting the timing of an amendment to the City's NSP-1 grant agreement include the fire on the Atrisco multi-family property that was acquired and constructed with NSP-1 funds. After this tragic event in February 2012, DFA, the City, and NMCPD were required to determine how to proceed with the Atrisco project, and how to treat and deal with insurance proceeds received by the City. The aftermath of the fire required a great deal of staff time to address both programmatic and legal questions that most staff had not faced previously. Ultimately, the parties agreed that the City could use a portion of the NSP-1 program

income toward the Atrisco property given that additional funds were needed for project completion after the fire.

In addition, NMCPD requested that DFA undertake a review of another of the City's NSP-1 contractors, T&C Management, on September 13, 2012 (please see the e-mail thread between DFA and NMCPD attached as Exhibit C). NMCPD staff member Monica Gonzales sent an email to Stephanie Romcro (Herrera) while Ms. Herrera was still an employee of DFA, indicating that "Frank wants to know if LGD has reviewed the Financial Analysis on the City's NSP Multi-family developments, to ensure that there are no windfall profits" before approving the use of program income. DFA/LGD was advised repeatedly by NMCPD to not allow the use of program income for multi-family properties (please see the e-mail from Frank Padilla to Stephanie Romero [Herrera], who was a DFA employee at that time, dated February 22, 2011 attached as Exhibit D) as an example. Given that over the past 18 months the only project the City has underway with NSP-1 is the Atrisco apartments, the City plans on going out for bid to obtain a single family property developer in June 2013.

Finally, DFA/LGD staff has communicated, and agreed on timelines and processes, with the City on a regular basis regarding the NSP-1 program, the use of program income, and the City's request to use program income for administrative expenses. DFA provided a draft amendment to the City for review on June 10, 2013.

NSP-3: Kaspia

Program income from the NSP-3 program was not earned until May 31, 2012, when the first NSP-3-funded home was sold to an income-eligible homebuyer. DFA received the funds from that first home sale on June 4, 2012.

DFA/LGD and The Kaspia Group, Inc. ("Kaspia") have executed three amendments to their Developer Agreement, effective on November 8, 2011, in the amount of \$2,500,000. Amendment No. 1, effective June 19, 2012, provided Kaspia with an additional \$2,000,000 for NSP-3 program activities after DFA/LGD accepted Kaspia's response to a Notice of Funding Availability. DFA/LGD drafted Amendments No. 2 and 3, effective January 24, 2013 and April 1, 2013, respectively, at the request of Kaspia to adjust certain budget categories. As of the date of the Report, Kaspia had not spent down its \$4,500,000 in funds for program administration. It is unclear why NMCPD would assert that DFA has not distributed program income timely given that original grant amount has not been fully expended. Moreover, DFA addressed Kaspia's concerns with respect to budget category allocations, as evidenced by Amendments No. 2 and 3. It should be noted that all previous amendments that have been requested by Kaspia have been processed timely.

The Funding Approval and Grant Agreement for the NSP-3 program, in the amount of \$5,000,000, by and between HUD and the State of New Mexico, sets forth the following expenditure deadlines: the State must expend half of the funds within 24 months of the date of HUD's execution of the agreement (March 1, 2013), and must expend all of the funds within 36 months of HUD's execution of the agreement (March 1, 2014). DFA's pace of expenditures of the NSP-3 funds significantly exceeds these required deadlines. As of March 1, 2013, DFA had expended \$3,950,011 (inclusive of administrative expenses), or 79 percent of the total NSP-3

grant amount. As of May 15, 2013, DFA has expended a total of \$4,584,627 (inclusive of administrative expenses), or 92 percent of the total NSP-3 grant amount.

The Report states that homebuyers have been caused "undue hardship." Kaspia has completed rehabilitation on seven homes that continue to be on the market for sale to income-eligible homebuyers (and an additional home is on the market, with rehabilitation in progress). Many of these homes have been available for resale for several months. Therefore, is it unclear how homebuyers have been harmed by the fact that a fourth amendment to the Developer Agreement has not yet been finalized.

I am particularly concerned by the Report listing as a "Cause" of this Condition that the State's review process, "... which requires the legal division (sic) to review all contract (sic) and amendments, is inefficient and has caused undue delays in the review and execution of contracts and amendments." Legal review of contracts that legally bind the State of New Mexico is imperative to ensure that public funds are being expended legally and accountably, and that the State has recourse for potential fraudulent or unallowable expenditures. Moreover, it is unreasonable to request the Secretary of Finance and Administration, or his designees, to execute contractual obligations without the consultation of his legal representatives.

Corrective Action. DFA is in the process of finalizing amendments for both NSP-1 and NSP-3 that will expedite distribution of funds. In addition, the Master Calendar and Policies and Training described in the response to Finding No. 1 will provide a better understanding and tracking of future program income deadlines.

Finding No. 3: The State of New Mexico has not been responsive to HUD.

Response:

This is not a proper finding, since NMCPD has not identified a specific standard that DFA/LGD violated. In other words, NMCPD has declared after the fact that DFA/LGD's responsiveness was inadequate based upon a standard known only to NMCPD.

The Report is also internally inconsistent. NMCPD claims that the lack of responsiveness has precluded it from determining whether the State is meeting the requirements under 24 CFR § 570.494 concerning the timely distribution of funds. [Report, Finding 3, Effect.] At the same time, however, in Findings No. 1 and 2, NMCPD concluded that the State is not meeting those requirements.

Moreover, the claimed lack of responsiveness relates to requests for timelines about future events. NMCPD does not need timelines about future events to determine whether DFA/LGD has timely distributed funds in accordance with applicable standards. Our records concerning what actually happened are all that NMCPD needs to determine compliance at the appropriate time.

NMCPD's specific demand for corrective action proves the point. The Section 108 Loan Guarantee Funding Approval/Agreement imposes the following Special Condition 8(e):

The State-assisted public entity shall not incur any obligations to be paid with guarantee loan funds prior to the receipt of a written determination from the HUD New Mexico Field Office that (i) the activity meets the eligibility requirements of 24 CFR 570.703, (ii) each eligible activity to be undertaken or supported with loan guarantee funds will meet the national objective requirements of §570.208 and, [sic] (iii) the applicable public benefit standards will be met, in accordance with of [sic] §570.209(b).

The State is in compliance with this condition, since no obligations to be paid with guarantee loan funds have been incurred. Nonetheless, in the Report, NMCPD demands that DFA/LGD satisfy the condition within 30 days of the Report by submitting the information required by Special Condition 8(e). This is not a proper request, since NMCPD has not established a violation of any applicable standard.

In its Report, NMCPD states “HUD has never experienced the lack of responsiveness and insolence manifested by current DFA/LGD management. If this relationship is to improve, DFA/LGD must comply with all requests and inquiries made by HUD staff.” This is exactly the type of characterization and personal opinion that the GMH specifically counsels reviewers to avoid. [GMH, Section 2-13(B)]

NMCPD’s specific program-related assertions are addressed as follows.

The Report states that “as of May 1, 2013 DFA/LGD has not responded to HUD in regards to the status of the NSP programs or the use of Program income for the City of Albuquerque.” This statement is factually inaccurate. A number of emails were exchanged between NMCPD and DFA/LGD regarding this specific issue beginning on April 9, 2013. A status update was provided to NMCPD on April 12, 2013, when DFA/LGD sent an email to NMCPD stating that DFA/LGD was waiting for the budget request from the City.

Furthermore, the LGD Deputy Director, Jolene Slowen, was contacted by Mr. Padilla and Ms. Herrera on or about April 25, 2013 via phone regarding the timing of budgeting the NSP-3 program income funds in order to make funds available to Kaspia under Amendment No. 4 to the Developer Agreement. During that call, Ms. Slowen indicated to Mr. Padilla and Ms. Herrera that, unfortunately, she could not predict the timing of the budgeting but that DFA would continue to work to complete all required budget procedures as quickly as possible. NMCPD was informed, again, as was Kaspia, that during the legislative session BARs are not processed by the State. The conversations with NMCPD and Kaspia occurred in early January 2013.

The Report indicates that DFA has not produced requested timelines for activities. DFA appreciates NMCPD’s desire for specific timelines regarding the implementation of the Section 108 Program; however, as DFA has expressed to NMCPD staff on numerous occasions, specific timelines are difficult to predict for the implementation of a first-time program for the State; this is also the first time that any state in the country has utilized a “loan pool” concept for a Section 108 Program. Rolling out the Section 108 Program has required a great deal of due diligence and research. Given that Section 108 loans are secured with the State’s future CDBG

allocations, it is DFA's duty to conduct this due diligence, especially given the very high amount of the loans being considered--\$10,000,000 each, for a total of \$20,000,000.

With respect to the Environmental Review NMCPD mentioned in its report, DFA completed its review and published the Notice of Finding of No Environmental Impact and Notice of Request for Funding on May 2, 2013. DFA delivered the Environmental Review to NMCPD on May 22, 2013. DFA notes that typically the local governmental entity receiving the Section 108 loan would be the entity performing the Environmental Review; however, NMCPD requested that DFA conduct the Environmental Review (please see the e-mail from Stephanie Herrera dated January 23, 2013, attached as Exhibit E).

Although HUD allows reimbursement of DFA's expenses incurred under the Section 108 program, that reimbursement is only available after a loan agreement is concluded. Thus the substantial costs that DFA has already incurred, including expenses on contractors to help evaluate loan applicant creditworthiness and to prepare loan documents, have been absorbed within DFA's budget without reimbursement. Given the novelty of many responsibilities associated with Section 108, and the fact that expenses have not been reimbursed so these responsibilities are competing with other activities, as well as the inherent risks in making commercial loans to new companies, it is easy to understand why the program cannot be rolled out in an overly rapid timeframe.

Finding No. 4: HUD has received numerous complaints regarding LGD/DFA's performance in administering HUD grants.

Response:

This is not a proper finding, since it does not establish a violation of any applicable standard. In any event, NMCPD reports receiving 23 citizen complaints between November 2012 and April 2013. During the Review exit briefing, DFA requested the documentation evidencing these complaints. To date, NMCPD has not provided DFA with any such evidence. DFA again respectfully requests documentation of these alleged complaints. Without this information, it is unreasonable to issue a finding against DFA and impossible for DFA to determine the validity of the complaints or address those that are legitimate.

NMCPD states that the cause for this finding relates to legal review. DFA reiterates that legal review of contracts that legally bind the State of New Mexico is imperative to ensure that public funds are being expended legally and accountably, and that the State has recourse for potential fraudulent or unallowable expenditures. Moreover, it is unreasonable to request the Secretary of Finance and Administration and his designees to execute contractual obligations without the consultation of his legal representatives.

The following responds to specific matters set forth under "Effect".

DFA Has Timely Distributed CDBG Grant Agreements.

DFA strongly objects to the assertion that it has been untimely in its distributions of CDBG grant agreements. 24 CFR 570.494 provides the following with respect to the timely distribution of funds by states:

- (a) States are encouraged to adopt and achieve a goal of obligating and announcing 95 percent of funds to units of general local government within 12 months of the state signing its grant agreement with HUD.
- (b) HUD will review each state to determine if the state has distributed CDBG funds in a timely manner. **The state's distribution of CDBG funds is timely if:**
 - (1) All of the state's annual grant (excluding state administration) has been obligated and announced to units of general local government within 15 months of the state signing its grant agreement with HUD;**
 - and
 - (2) Recaptured funds and program income received by the state are expeditiously obligated and announced to units of general local government. (Emphasis added.)

Article II of HUD Notice: CPD-13-03, issued April 29, 2013, provides that:

The term "obligated and announced to" means the date on which a state officially announces the selection and award of grants to its units of general local government by means of any official letter, press release, news media announcement, public notice, or official notice of award...The date of such an announcement will be used to measure compliance with the 15 month period for timely distribution.

HUD and Governor Martinez entered into the State's annual CDBG grant on May 7, 2012, which created a deadline of August 7, 2013 for the State to satisfy the timely requirement. As that date is still in the future, it is not possible for the State to have missed it. Furthermore, the Community Development Council ("CDC") announced the awards of \$7,623,764 in 2012 CDBG money at its May 31, 2012 public meeting. At that meeting, the CDC also set aside \$200,000 for emergencies and \$263,105 for planning purposes. The CDC, which will be meeting again on June 17, 2013, will announce awards for any remaining 2012 CDBG funds as well as for the 2013 CDBG funds. Therefore, DFA clearly complied with 24 CFR 570.494 given that 1) public announcement, which "obligated and announced to" the local governments their 2012 CDBG grant awards of more than 94 percent of the funds available for obligation, was made within 24 days of execution of HUD's grant agreement by Governor Martinez, and 2) DFA has a clear plan for "obligating and announcing to" the local governments any funds that have not already been "obligated and announced".

Furthermore, DFA timely distributed and executed its 2012 CDBG grant agreements with local governments. DFA and local governments entered into a total of 23 grant agreements. The execution of the 2012 CDBG grant agreements commenced on September 4, 2012; 16 more agreements had been executed by the end of October 2012, with an additional three executed in November 2012; two of the remaining agreements were executed in January 2013, with the final agreement executed on March 15, 2013. Even if execution of a grant agreement was the proper

standard – which it is not – DFA would have met it, since all grant agreements were executed (or will be executed) within 15 months of the State signing its grant agreement with HUD.

DFA Has Timely Distributed NSP-3 Amendments.

The Report states “Delay in Grant Agreement Amendments for NSP Programs has caused the programs to be delayed.” DFA is not aware of any delays caused by an alleged delay in grant agreement amendments. In fact, as mentioned above, DFA has expended a total of \$4,584,627, or 92 percent of its \$5,000,000 NSP-3 grant as of May 15, 2013. Moreover, DFA’s contractor, Kaspia, has completed rehabilitation on several houses that are still on the market for resale to income-eligible homebuyers. The addition of program income will not affect Kaspia’s contractual obligation to sell these homes.

The Report fails to document and identify any specific incident in which a “[d]elay in Grant Agreement Amendments has forced UGLG to go without payment for months or not be able to close a project timely” or a “[d]elay in Requests for Payment has forced some UGLG to go without payment, putting the UGLG in a financial bind.” Without such detail, it is impossible for DFA to meaningfully evaluate and respond to this claim. Please immediately identify, in writing, every instance of a grant agreement amendment or payment delay resulting in the situations described.

Required Correction Action is Not Justified or Practicable.

NMCPD demands that the State provide NMCPD with “written policies and procedures on how the State will eliminate the time elapsing between Grant Agreements, Grant Amendments, and Request for Payments for both the CDBG and NSP Programs.” As indicated, NMCPD failed to establish a violation of any applicable standard in Finding 4. Therefore, this required corrective action is not justified.

Moreover, NMCPD did not articulate, let alone prove, the amount of “time elapsing”. Consequently, it is impossible for DFA/LGD to develop written policies and procedures to eliminate the unidentified amount of “time elapsing”.

Concern No. 1: Per State CDBG requirements, all grants must be monitored once a year for the life of the grant. The first monitoring review has to be completed within one year of grant execution. Per review of the DFA/LGD, it was determined that several monitoring reviews were late.

Response:

The Report fails to identify specific instances in which monitoring reviews were late. Because NMCPD has not even identified the time period under review, it is impossible to judge the factual accuracy of this statement. Nonetheless, the concern expressed has caused DFA to evaluate its processes. It has determined that the following changes would improve them:

- *Development of a Master Calendar.* By June 30, 2013, DFA will develop a master calendar that captures all CDBG deadlines. Monitoring review deadlines will be calendared. This will allow for better monitoring of all deadlines and progress made toward meeting them.

- *Quarterly Review of Upcoming Monitoring Deadlines.* At the beginning of each quarter, DFA will determine what monitoring is due during the upcoming quarter to ensure that all monitoring is timely done.

Concern No. 2: Review of the NSP3 program revealed that the State of New Mexico is slow in meeting the LH25 requirement which states that “No less than 25 percent of the funds shall be used to house individuals and families whose incomes do not exceed 50 percent of area median income.” As of the time of the review the State has 13% toward this requirement, with over 86% of the grant drawn. The grant expires in March 2014.

Response:

DFA/LGD is aware of this issue and, in recognition of its importance, DFA/LGD contractually obligated Kaspia to satisfy the 25 percent requirement, and Kaspia has agreed to all NSP requirements set forth in the Federal Register (NSP-3 HUD Notice FR-5447-N-01 dated October 19, 2010).

LGD Staff attended a nationwide webinar presented by HUD in early 2013 during which the national HUD office acknowledged that the 25 percent requirement would be difficult to achieve for most states, particularly those which are focused solely on single family housing. The recommendation, during the webinar, was to investigate the possibility of using NSP funds to purchase rental properties. This option gives states a greater opportunity to achieve the 25 percent. However, the NMCPD office has advised DFA/LGD to focus on single family homes and not rental properties on numerous occasions. DFA/LGD will continue to work with our NSP contractors and NMCPD to explore all opportunities to ensure the requirement is met. Currently, DFA/LGD and the NSP contractors have reviewed signed purchase agreements that, when the sale is completed, will increase the percentage to 20 percent towards this requirement. Furthermore, DFA/LGD is incorporating several changes into Amendment 4 for Kaspia. One is an increase of the percentage of funds available for the “soft second” mortgage. This change will assist DFA/LGD in meeting the 25 percent requirement by increasing the number of lower income homebuyers that will be able to purchase NSP-3 homes. The second change, in the amendment with Kaspia, is increasing the percentage of below 50 percent Area Median Income (AMI) homebuyers who ultimately purchase NSP homes. These changes will help ensure that DFA/LGD meets the 25 percent requirement. The requirement is, and will continue to be, closely monitored with every executed purchase agreement.

Concern No. 3: DFA/LGD has lost most of its management staff that has knowledge and experience with HUD programs. Sam Ojinaga who was the Deputy Director of the Local Government Division was removed after 14 years of experience. Dolores Gonzales, Community Development Bureau Chief, is leaving after 16 years of experience. Barbara Romero, Assistance Bureau Chief, is leaving after 9 years of experience.

Response:

Such assessment of previous managers' knowledge and experience without the due comparison of current managers' knowledge and experience appears to be inappropriate, highly subjective, personal, and uncalled for. Moreover, several of the issues noted in the Report occurred during the tenure of the noted staff. Staff turnover is a challenge for all organizations, and DFA is no different. Fortunately, NMCPD's description of Deputy Director Sam Ojinaga as being "removed" is factually incorrect, as he continues to be a valuable source of institutional and historical knowledge about the CDBG program. Nonetheless, there may be pains that come along with the turnover of some staff. However, DFA/LGD is confident that fresh perspectives from new employees will be beneficial in our efforts to make a strong program even stronger.

CONCLUSION

Although I have a number of concerns with the process and content of the Review and Report, I value DFA's long-standing relationship with HUD and NMCPD. The CDBG Program has made a tremendous difference for citizens across New Mexico and we welcome suggestions for improvements that will make it even stronger. Such suggestions, however, should be based on clearly articulated criteria that are made known to DFA well in advance of the Review so staff has a reasonable opportunity of meeting expectations.

Both the NSP and Section 108 Programs have the potential to be beneficial for New Mexico; however, they have required substantially new policies and procedures that have caused the inevitable growing pains that are associated with standing up new programs. Because these programs involve an elevated risk of misuse of funds when compared with the traditional CDBG program, DFA will continue to exercise diligence to ensure that there is no misuse of these funds. DFA will make every effort to expedite the implementation of these programs in a way that is consistent with these goals.

Sincerely,



Thomas E. Clifford, PhD
Cabinet Secretary

cc: Honorable Susana Martinez, Governor
 Honorable Thomas Udall, United States Senator
 Honorable Martin Heinrich, United States Senator
 Honorable Ben Ray Lujan, United States Representative
 Honorable Michelle Lujan Grisham, United States Representative
 Honorable Steve Pearce, United States Representative
 Ms. Frances Bush, Deputy Assistant Secretary for Operations, U.S. Department of
 Housing and Urban Development
 Ms. Renee Ryles, Acting Director, Office of Field Management, U.S. Department
 of Housing and Urban Development
 Community Development Council



U.S. Department of Housing and Urban Development

500 Gold Avenue SW, Suite 7301

PO Box 906

Albuquerque, NM 87103-0906

MAR 26 PM 3:04

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BATAAN MEMORIAL BUILDING

SANTA FE, NM 87501

505.346.7271

TTY 1.800.877.8339

March 4, 2013

Ms. Dolores Gonzales, Bureau Chief
 Local Government Division
 State of New Mexico
 Bataan Memorial Building, Room 201
 Santa Fe, NM 87501

RE: 2013 Monitoring Review

Dear Ms. Gonzales:

This letter will serve as the official notification of our plan to conduct a monitoring review of the CDBG and NSP grant programs for the State of New Mexico.

Monica Gonzales, Financial Analyst, will conduct the review. The review will begin on April 2, 2013 at 11:00 am. The review will last for approximately one week. We will also perform on-site reviews of selected subgrantees on the week of April 8, 2013. These reviews should last approximately one week.

The monitoring review will focus on compliance with CDBG regulations codified at 24 CFR 570, and compliance with the NSP1 program at 75 FR 58330, revisions to these regulations in the NSP Bridge Notice at 74 FR 29223, and compliance with the NSP3 program at 75 FR 64322.

An exit conference will be conducted upon completion of the review.

We will use the following exhibits from the CPD Grantee Monitoring Handbook which can be found at <http://www.hud.gov/offices/cpd/library/monitoring/index.cfm>:

CDBG:

- EXHIBIT 4-1 Guide for Review of Eligibility and National Objective
- EXHIBIT 4-2 Guide for Review of Eligibility and National Objectives: Economic Development Supplement
- EXHIBIT 4-3 Guide for Review of the Overall Benefit Test
- EXHIBIT 4-4 Guide for Review of Conformance to Method of Distribution
- EXHIBIT 4-5 Guide for Review of Timely Distribution
- EXHIBIT 4-6 Guide for State Review of Grant Recipients
- EXHIBIT 4-7 Guide for Review of Administrative Financial Management Requirements
- EXHIBIT 4-8 Guide for Review of Closeout System
- EXHIBIT 4-9 Guide for Review of Colonias Set-Aside

Exhibit A

- EXHIBIT 19-2 Guide for Completeness Review of State Citizen Participation Plan
- EXHIBIT 19-4 Guide for Review of State Citizen Participation Plan Performance
- EXHIBIT 22-2 Guide for Review of Civil Rights-Related Program Requirements for the State Community Development Block Grant (CDBG) Program
- EXHIBIT 22-6 Guide for Review of Civil Rights-Related Program Requirements for Section 504 of the Rehabilitation Act of 1973, as amended
- EXHIBIT 22-7 Guide for Review of Section 3 of the Housing and Urban Development Act of 1968
- EXHIBIT 24-1 Guide for Review of Lead-Based Paint Compliance in Properties Receiving Federal Rehabilitation Assistance
- EXHIBIT 26-2 Guide for Review of CDBG-Funded Public Facilities/Improvements

NSP:

- EXHIBIT 8-10 Guide for Review of NSP-1 Program Progress
- EXHIBIT 8-11 Guide for Review of NSP-1 National Objective of Benefit to Low-, Moderate-, and Middle-Income Persons
- EXHIBIT 8-12 Guide for Review of NSP-1 Cooperative Agreements
- EXHIBIT 8-13 Guide for Review of NSP-1 State Requirements
- EXHIBIT 8-14 Guide for Review of NSP-1 Continued Affordability
- EXHIBIT 8-16 Guide for Review of NSP-1 Fair Housing and Equal Opportunity Requirements

Please be prepared to supply the following supporting documentation:

- 2012 CDBG Ranking and Rating Manual
- 2012 CDBG Allocation Spreadsheet
- Monitoring Schedule
- Audit Schedule

We will select a sample of projects that we will be reviewing prior to the date of review.

If you have any questions, please contact Monica Gonzales, Financial Analyst, at [REDACTED] or e-mail monica.m.gonzales@hud.gov.

Sincerely,



Frank Padilla
Director



U.S. Department of Housing and Urban Development

500 Gold Avenue SW, Suite 7301
PO Box 906
Albuquerque, NM 87103-0906

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OFFICE OF COMMUNITY PLANNING AND DEVELOPMENT

505.346.7271
TTY 1.800.877.8339

September 26, 2011

Ms. Dolores Gonzales
Community Development Bureau Chief
Local Government Division
State of New Mexico
Bataan Memorial Building, Room 201
Santa Fe, NM 87501

Re: Local Government Division's (LGD) recapture of the City of Albuquerque's Neighborhood Stabilization Program 1 (NSP1) funds

Dear Ms. Gonzales:

After review of the City of Albuquerque's NSP1 Program, and based on numerous issues as identified by monitoring reviews conducted by LGD and HUD, HUD has determined that it is in the best interest of the program for LGD to recapture any unused funds, including PI. The most egregious finding being that the City did not comply with Federal procurement regulations at 24 CFR 85.36, nor State procurement as it relates to the awarding of the NSP1 rental contract to T&C Management. The City of Albuquerque proceeded to award nearly \$5,000,000 in phases 2 and 3 of the City NSP1 program without any formal procurement.

These funds should be reallocated to the New Mexico Mortgage Finance Authority (MFA) for use within the boundaries of the City of Albuquerque. MFA can then proceed to allocate funds to their current contractors.

If you have any questions, please call me at [REDACTED]

Sincerely,


Frank Padilla
Director

1001102

Saiz, Simon P, DFA

To: Saiz, Simon P, DFA
Subject: RE: Letter to State

From: Gonzales, Monica M [<mailto:Monica.M.Gonzales@hud.gov>]
Sent: Thursday, September 13, 2012 5:28 PM
To: Romero, Stephanie M, DFA; Padilla, Frank
Cc: Gonzales, Dolores C., DFA; Saiz, Simon P, DFA
Subject: RE: Letter to State

Hi Stephanie,

Before we approve it, Frank wants to know if LGD has reviewed the Financial Analysis on the City's NSP Multi-family developments, to ensure that there are no windfall profits. Thanks

Monica Gonzales
Financial Analyst
Department of Housing and Urban Development
Office of Community Planning and Development
500 Gold Avenue SW
7th Floor, Suite 7301
PO Box 906
Albuquerque, NM 87103-0906
Phone: 505.346.7345
Fax: 505.346.6604
monica.m.gonzales@hud.gov

From: Romero, Stephanie M, DFA [<mailto:StephanieM.Romero@state.nm.us>]
Sent: Wednesday, September 12, 2012 11:05 AM
To: Padilla, Frank; Gonzales, Monica M
Cc: Gonzales, Dolores C., DFA; Saiz, Simon P, DFA
Subject: FW: Letter to State

Hi Frank,

The City of Albuquerque is requesting to use \$244,258.30 in NSP program income to complete the Atrisco Apartments. The additional funds requested are a result of the fire that demolished two of the four buildings. Last year HUD directed the Department of Finance and Administration to use program income for Single Family Rehab's. Therefore, I am requesting your approval for the City of Albuquerque to use \$244,258.30 in NSP program income to complete the Atrisco Apartments. The attached letter from the City of Albuquerque details the additional construction and carrying costs expected with the re-construction of the building. If you have any questions please let me know.

Thanks,
Stephanie

From: Dunning, Karen L. [<mailto:kdunning@cabq.gov>]
Sent: Wednesday, September 05, 2012 2:57 PM
To: Romero, Stephanie M, DFA
Cc: Montoya, Monica T.; Bargas, Valerie J.
Subject: Letter to State

Exhibit C

Am attaching a letter that was mailed to Sam yesterday. Please feel free to pass it along to others so that everyone knows the numbers before copies get routed in DFA. If you have any questions give me a call. <<AtriscoRebuildRequest.pdf>>

Jackson, Rebecca, DFA

From: Romero, Stephanie M, DFA
Sent: Wednesday, October 12, 2011 2:11 PM
To: Jackson, Rebecca, DFA
Subject: FW: Weekly NSP LH25/QPR Reports, NSP 1 and NSP 2 Status reports for distribution - week of Feb. 21, 2011

Importance: High

FYI for your records this is one of the e-mails where frank said we need to concentrate on single family foreclosures.

From: Padilla, Frank [<mailto:Frank.Padilla@hud.gov>]
Sent: Tuesday, February 22, 2011 1:37 PM
To: Romero, Stephanie M, DFA
Cc: Gonzales, Monica M
Subject: FW: Weekly NSP LH25/QPR Reports, NSP 1 and NSP 2 Status reports for distribution - week of Feb. 21, 2011
Importance: High

Congratulations State of New Mexico! Please move forward with committing of NSP 1 funds in Albuquerque, you will note that the State has meet its 25% requirement, therefore in light of the recent report on single family foreclosures in Albuquerque I encourage you to focus on these issues with program income. Thanks.

From: Ryles, Renee
Sent: Tuesday, February 22, 2011 11:30 AM
To: CPD FO Directors; Albaari, Tasleem; Hoglund, Erik D
Cc: Herbert, Ronald J; Williams, Glenda J; Sowell, Michael L; Adams, Kim C; Blankenship, Zita; Biechman, John C; Rose, Michael D; Yerdon, James
Subject: Weekly NSP LH25/QPR Reports, NSP 1 and NSP 2 Status reports for distribution - week of Feb. 21, 2011
Importance: High

CPD Directors

Attached are this week's NSP LH-25 reports, the NSP 1 and NSP 2 Status Reports.

Renee

Slowen, Jolene M, DFA

From: Romero, Stephanie M <Stephanie.M.Romero@hud.gov>
Sent: Wednesday, January 23, 2013 3:43 PM
To: Slowen, Jolene M, DFA
Cc: Padilla, Frank
Subject: RE: Environmental Review

Jolene,

Per our conversation this e-mail should have said "can" conduct the environmental review for the Section 108 Loan guarantee program. 24 CFR Section S8.11 (d) states "If a responsible entity, other than a recipient, objects to performing an environmental review, or if HUD determines that the responsible entity should not perform the environmental review, HUD may designate another responsible entity to conduct the review in accordance with this part or may itself conduct the environmental review in accordance with the provisions of 24 CFR part S0". Therefore, HUD has given the State of New Mexico the Authority to conduct the environmental review in accordance with 24 CFR part S8, if the State chooses to do so.

If you have any questions please don't hesitate to ask.

Thanks,
Stephanie

From: Romero, Stephanie M
Sent: Wednesday, January 23, 2013 11:46 AM
To: "jolenem.slowen@state.nm.us" (jolenem.slowen@state.nm.us)
Cc: Padilla, Frank
Subject: Environmental Review

Good Morning Jolene,

After review of the regulations found at 24 CFR S70.704(d), our office has determined the State shall still conduct the environmental review for the Section 108 Loan Guarantee Program, as discussed on the conference call yesterday. If the State does not have the capacity to conduct the environmental review in accordance with 24 CFR part S8. Please notify our office immediately.

Thanks,

Stephanie Marie Herrera

Community Planning and Development Representative
Office of Community Planning and Development

Department of Housing and Urban Development
500 Gold Avenue SW, Suite 7301
P.O. Box 906
Albuquerque, NM 87103-0906
Ph: (505) 346-7341
Fax: (505) 346-6604
Stephanie.M.Romero@hud.gov



U.S. Department of Housing and Urban Development

500 Gold Ave. SW, Suite 7301
PO Box 906
Albuquerque, NM 87103-0906

NEW MEXICO
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July 08, 2013

Mr. Tom Clifford, Cabinet Secretary
Department of Finance and Administration
The State of New Mexico
Office of the Secretary
180 Bataan Memorial Building
Santa Fe, NM 87501

RECEIVED

JUL 10 2013

DFA
OFFICE OF THE SECRETARY

Subject: The State of New Mexico 2013 Monitoring Response

Dear Secretary Clifford:

We have reviewed the Department of Finance and Administration, Local Government Division's (DFA/LGD) response dated June 10, 2013. The Department of Housing and Urban Development (HUD) has determined that the response was incomplete and does not address all of the findings cited.

As a consequence, as authorized by 24 CFR 570.495, we are hereby notifying DFA/LGD that as of August 1, 2013, we are putting a hold on the administrative funding. This hold will stay in place until such time as the DFA/LGD adequately addresses the findings cited in the review, as well as provide HUD with the requested plan with remediation of issues noted in the review.

Since HUD at this time is not reducing any grant nor taking punitive actions with respect to dollar amounts of any grant, a hearing is not warranted. If however, due to the seriousness of these issues, you would like to meet with the department, please contact us at your earliest convenience.

DFA's General Concerns with the Review Process

1. NMCPD Did not follow CDBG Review and Audit Procedure Guidelines

DFA/LGD cites Section 2-7(C)(2) of HUD's CPD Grant Monitoring Handbook and states that there was limited communication during the review process. In fact, there was constant communication with the Bureau Chief (which has since resigned) and her staff. HUD has enjoyed a very good working and professional relationship with DFA/LGD staff and management during the past 15 years. Only recently with the change in management has HUD encountered issues with non-compliance with inquiries and requests made by the department. If DFA/LGD would have communicated internally, it would have discovered that there was constant communication during the review. Other management was not involved in the monitoring process and the Deputy Director was aware that during the monitoring visit HUD

was instructed to speak with the Bureau Chief. HUD staff conducting the audit provided the Bureau Chief with a list of items during the review in which staff provided "on the spot" adjustments. Each Project Manager was provided a list of items missing from the files and given an opportunity to correct the finding prior to the exit conference. If HUD staff would not have given the staff this opportunity there would have been additional findings to the ones given.

All items on the Monitoring report were discussed at the exit conference conducted on May 6, 2013 in which Secretary Clifford, Ryan Gleason, DFA/LGD Director and Jolene Slown, DFA/LGD Deputy Director, were in attendance. The findings that were noted in the letter were not items that could be corrected on the spot. DFA/LGD could not provide any additional information to resolve any of the findings at the time of the review.

After HUD communicated the findings and concerns to DFA/LGD at the exit conference, the monitoring report was drafted and mailed to DFA/LGD, as is standard monitoring process. HUD is not required nor does it provide a draft of the report to the Grantee. HUD has 60 days to send the monitoring report, which was done well in advance of that time period. DFA/LGD's allegation that HUD made the monitoring report public is factually incorrect. HUD did not make the monitoring report public; however the monitoring report is part of public record in accordance with the Inspection of Public Records Act. NMSA 1978, Chapter 14, Article 2. A. Therefore, anyone at any time can request access as a citizen.

2. NMCPD Review of DFA Demonstrated a Lack of Auditor Independence

HUD reserves the right to assign staff to review and oversight responsibilities. Therefore, DFA/LGD's assertion as to the lack of independence of the reviewers is without merit. However, to address DFA/LGD's concerns HUD will address the concern in regards to the lack of auditor independence. Monica Gonzales was the lead reviewer, and Stephanie Herrera was assisting. As Stephanie Herrera was not the lead reviewer, she was not required to be identified on the monitoring letter.

Monica Gonzales was clearly introduced as the lead reviewer at the exit conference. It is untrue that Stephanie Herrera was serving as the lead, as she was clearly identified as assisting Monica Gonzales.

While Stephanie Herrera was employed at DFA/LGD she did serve as the lead project manager on the Neighborhood Stabilization Program (NSP). Therefore, she did not review the NSP programs during the HUD monitoring review. In addition, the Community Development Block Grant (CDBG) files that were audited were City of Deming, Town of Mesilla, Guadalupe County, San Miguel County, Village of Ft. Sumner, De Baca County, City of Portales, City of Carlsbad, City of Lordsburg, Town of Taos, Village of Loving, and Village of Mosquero. Stephanie Herrera did not oversee the above CDBG listed projects. 12 months prior to the review Stephanie Herrera was only responsible for Santa Fe County and Bernalillo County and the municipalities that reside in them. Attached is DFA/LGD's CDBG and Legislative Map (effective 9/7/2011), showing the counties and municipalities Stephanie Herrera was responsible for.

Furthermore, for your edification, the definition of HUD's conflict of interest is at 24 CFR

570.611(b): Conflicts prohibited. The general rule is that no persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this part, or who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to a CDBG-assisted activity, or with respect to the proceeds of the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter.

Stephanie Herrera nor her husband Paul Herrera have any financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to a CDBG-assisted activity, or with respect to the proceeds of the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties. Therefore, referencing Paul Herrera as a possible conflict of interest is futile.

3. NMCPD Has Not Properly Communicated the Time Period Covered and Scope of the Review

HUD sent an email before the monitoring review to Dolores Gonzales on March 28, 2013 stating exactly which projects HUD would be reviewing. It clearly stated that it covered 2011 and 2012 projects. Furthermore, in the monitoring notification letter to the State, HUD requested 2012 supporting documentation. As stated above, if DFA/LGD had communicated internally, DFA/LGD would have known that the former Bureau Chief was very aware of the time period being reviewed, as well as the scope.

Furthermore, HUD reserves the right to review any and all aspects of HUD programs (including section 108) as cited at 24 CFR 570.490(c)(1):

Representatives of HUD, the Inspector General, and the General Accounting Office shall have access to all books, accounts, records, reports, files, and other papers, or property pertaining to the administration, receipt and use of CDBG funds and necessary to facilitate such reviews and audits.

DFA Responses to Findings and Concerns

Finding 1

The State of New Mexico was negligent in its oversight and failed to meet Office of Management and Budget (OMB) requirements, Treasury regulations, and HUD regulations for Cash Management.

DFA/LGD's assertion that holding on to funds that should have been returned for three years as "slow" is unacceptable. It is irrelevant that DFA/LGD was working on correcting the problem (however it was still not corrected as of time of review). DFA/LGD held on to these funds for three years, therefore a finding was warranted.

As stated above, HUD did not make the monitoring report public. However, the monitoring report is part of public record so anyone at any time can request access as a citizen. Regarding

DFA/LGD's statement that only .037% of the total funds received were not returned is inconsequential. It does not matter how much the percentage of the amount was not returned, the fact is that it was not returned.

Finding 1 is conditionally closed pending receipt by HUD of the Master Calendar of all CDBG deadlines, and policies regarding recaptured funds and program income, as referenced in DFA/LGD's monitoring response.

Finding 2

The State of New Mexico has been untimely in distributing program income.

HUD Notice CPD 13-03 issued April 29, 2013, states that "amounts from prior year allocations, recaptured funds and program income are not included in evaluating basic compliance with distributing the annual allocation. Field Offices will continue to separately review the timely distribution of recaptured funds and program income as required at 24 CFR 570.494(b)(2)".

DFA/LGD stated "the review is unclear about how to measure the amount of time appropriate to determine compliance" and references the 2013 HUD CPD Memo 13-03. The standards on budgeting program income have been in long existence. Former DFA/LGD staff were aware of the standards for program income. Attached is a HUD CPD Memo dating back to 2006 that provided standards for program income. Therefore, DFA/LGD should have had a clear understanding on how to determine this compliance standard, since the standard is not a new standard.

DFA/LGD also references additional delays that resulted in the program income amendment being delayed. One such reference is a letter from Stephanie Herrera dated September 26, 2011. The letter was sent twenty-three (23) months prior to the amendment being sent to the City of Albuquerque. In addition, DFA/LGD references an additional delay with the NSP3 contractor in 2010 or early 2011. Assuming the later date of early 2011 is when the issue was settled out of court, DFA/LGD is stating that the contractor issue in 2011 delayed the grant agreement by thirty-one (31) months. DFA/LGD's response also indicated that an additional circumstance affecting the timing of the amendment to the City was the fire that happened to the Atrisco Multi Family Property. As the monitoring response stated, the fire was in February of 2012, eighteen (18) months prior to the amendment being provided to the City of Albuquerque. Furthermore, DFA/LGD stated HUD provided notification by e-mail in February of 2011 of the concentration on Single Family homes; this is thirty (30) months prior to the amendment being sent to the City of Albuquerque. Therefore, the justifications DFA/LGD stated as the reasons for delay in the program income amendment to the City of Albuquerque are unacceptable to HUD.

It is inefficient and inconceivable that DFA/LGD would not have policies in place that ensure efficient and timely use and distribution of emergency funding.

While DFA/LGD has a right to ensure all contracts are legal, the process needs to be effective, efficient, and timely. During the course of the review performed by HUD, it became apparent per interviews with DFA/LGD staff, that delays in executing contracts were a direct result of the legal division not prioritizing this work. The end result is the delay of executing contracts with local governments and providing required amendments. These delays were verified by local

governments who complained directly to HUD that contracts were delayed in an inordinate time.

Finding 2 is conditionally closed pending receipt by HUD of the Master Calendar of all CDBG deadlines, and policies regarding recaptured funds and program income.

Finding 3

The State of New Mexico has not been responsive to HUD.

HUD's role under the State CDBG program is to ensure State compliance with Federal laws, regulations and policies. Therefore, HUD may consider relevant information on the State's performance gained from other sources, including litigation, citizens' comments, and other information provided by the State, in accordance with 24 CFR 570.493(b). In addition, in accordance with 24 CFR 570.490(c), representatives of HUD, the Inspector General, and the General Accounting Office shall have access to all books, accounts, records, reports, files, and other papers, or property pertaining to the administration, receipt and use of CDBG funds and necessary to facilitate such reviews and audits. Therefore, HUD, as the funding agency, has the right to request additional information and/or documentation to facilitate reviews and audits in order to determine compliance with laws, regulations and policies.

The State claims in the monitoring response that HUD was internally inconsistent in regards to Findings 1, 2, and 3 and that Finding 3 was based upon a standard only known to HUD. The Code of Federal Regulations (CFR) is the codification of the general and permanent rules and regulations (sometimes called administrative law) published in the Federal Register by the executive departments and agencies of the federal government of the United States. Every regulation has an enabling statute, or statutory authority. The CFR contains regulations, which spell out in further detail how the executive branch will interpret the law. The United States Code (U.S. Code) is a codification of legislation, while the CFR serves as administrative law. Administrative law exists because the Congress often grants broad authority to executive branch agencies to interpret the statutes in the U.S. Code (and in uncodified statutes) which the agencies are entrusted with enforcing. Congress does not write statutes that cover every possible detail. Therefore, since each possible detail in a CFR is not covered, HUD as the executive branch is able to interpret the controlling regulations and apply the same regulation to multiple findings.

HUD has never requested a timeline for the "implementation of the first time Section 108 loan guarantee program" or requested an "overly rapid timeframe" as mentioned in the monitoring response. The timeline requested was merely for DFA/LGD to notify HUD when we could expect to receive the signed Section 108 loan agreement from the Governor and the special conditions that are contained in the funding agreement between HUD and the State of New Mexico; specifically the following condition: "the State-assisted public entity shall not incur any obligations to be paid with guarantee loan funds prior to the receipt of a written determination from the HUD New Mexico Field Office that (i) the activity meets the eligibility requirements of 24 CFR 570.703. (ii) each eligible activity to be undertaken or supported with loan guarantee funds will meet the national objective requirements of 570.208 and, (iii) the applicable public benefit standards will be met, in accordance with 570.209 (b)". DFA/LGD should not have had difficulty providing the above items, even if the section 108 program is new to the State of New Mexico. The CDBG rules and requirements apply for the purposes of determining eligibility under the Section 108 Loan Guarantee Program. DFA/LGD has been administering the CDBG

program for approximately 20 years. During the exit interview with DFA/LGD, HUD stated we would be willing to work with DFA/LGD in regards to the timeliness in the event that DFA/LGD was unable to meet the timeline requested.

DFA/LGD's response to the monitoring letter stated that an e-mail was sent to HUD in regards to the City of Albuquerque's NSP budget. However, DFA/LGD omitted that on April 16, 2013, Stephanie Herrera e-mailed DFA/LGD with the following questions which were never responded to (see the attached e-mail) *:

"Can you please provide me a status as to where the State is with NSP1 & NSP3?

- Has the State decided to transfer NSP to MFA, if so by when?
- Has the State completed an Amendment for the City of Albuquerque to use program income, if so, when will it be completed?
- If the State has decided to retain the program income, can you please let me know when you plan on having it re-distributed to another area of greatest need?"

* Please note the original request for the bulleted items was made on December 18, 2012 in a letter addressed to the Governor of New Mexico.

In addition, DFA/LGD stated in the monitoring response that no obligations have been made to be paid with Section 108 Loan Guarantee funds, and DFA/LGD was in compliance with Special Condition contained in the funding agreement. However, during the Community Development Council (CDC) meeting on December 6, 2011, the CDC approved the Section 108 applications. The draft minutes of the CDC meeting (provided by DFA/LGD to HUD) state the following:

"Mr. Ryan moved to approve a \$10 Million HUD Section 108 Loan Guarantee to Atlantis Cyberspace, Inc., and Mr. Ryan moved to approve a \$10 million HUD Section 108 Loan Guarantee to REITech Global, LLC..."

The term "obligated and announced to" found in the CPD Notice13-03 is defined as the date on which a state officially announces the selection and award of grants to its units of general local government by means of any official letter, press release, news media announcement, public notice, or official notice of award that the state may use to notify its localities and citizens that a grant has been awarded. Note that this definition of "obligated" is not the same as a business definition which establishes a legal duty for payment. For the purpose of this regulation, it is more appropriately classified as a "commitment" or "reservation" which provides for budgetary control of the grant funds. Therefore, on December 6, 2012, DFA/LGD obligated (committed/reserved) funds to be paid with Section 108 loan guarantee funds.

As an additional point of clarification HUD did not "request" that DFA/LGD complete the Section 108 Environmental review. DFA/LGD's Exhibit E (e-mail between Stephanie and DFA January 23, 2013 (attached)) provided by DFA/LGD states that the State of New Mexico "can conduct the environmental review if the State choses to do so."

Additionally, HUD received an email on July 18, 2013 (see attached) from the New Mexico Mortgage Finance Authority (MFA), outlining concerns it had regarding DFA/LGD. MFA asserts that DFA/LGD has been unresponsive regarding its NSP1 contract which expired on June 20, 2013. MFA sent numerous requests to DFA/LGD for an amendment or extension to the contract. This has not been completed, and MFA has two homes with funds committed. No action can be taken on these homes until the contract is extended. Additionally, MFA is about to undergo an audit and these issues need to be cleared up prior to the audit.

Therefore, the response provided by DFA/LGD to HUD is considered un-satisfactory and Finding 3 will remain open until DFA/LGD provides the Local HUD office with the following items:

- **Activity descriptions for the Section 108 program so that the local HUD can make a written determination of the following: *(i) the activity meets the eligibility requirements of 24 CFR 570.703. (ii) each eligible activity to be undertaken or supported with loan guarantee funds will meet the nation objective requirements of 570.208 and, (iii) the applicable public benefit standards will be met, in accordance with 570.209 (b).***
- **DFA/LGD must provide the Local HUD office with a written determination as to what is happening with the Neighborhood Stabilization Programs. Is DFA/LGD going to continue to administer the Neighborhood Stabilization Programs, or will the programs be transferred to the New Mexico Mortgage Finance Authority? If the programs will be transferred, DFA/LGD must provide HUD with a detailed management plan with a plan outlining how and by when the transfer will be made.**

In addition, DFA/LGD must certify that it will be responsive to HUD's requests, by e-mail, phone, letters, and in all communication.

Finding 4

HUD has received numerous complaints regarding DFA/LGD's performance in administering HUD grants.

As stated above, Congress does not write statutes that cover every possible detail. Therefore, since each possible detail in a CFR is not covered, HUD as the executive branch is able to interpret the controlling regulations.

The standards violated were cited in the monitoring letter and will not be repeated. The local governments requested that they remain anonymous, due to fear of repercussions by DFA/LGD. HUD will honor the request that the local governments remain anonymous. However, HUD has compiled a list of complaints without the local government being specifically identified (please note HUD paraphrased the comments).

1. Pay Requests are very slow.
2. Grant agreements took too long, and no longer eligible for threshold.
3. Grant agreements took too long, the amendments taking too long, and management does not have experience with HUD regulations.

4. Lack of communication between directors and upper management, DFA/LGD does not visit communities, and grant agreements are taking too long.
5. Reimbursement of payments take too long.
6. Legal Review took too long, will not be able to meet threshold, and will affect future funding.
7. Waited months for an amendment, hold up on change orders, staff turnover too hard. DFA needs to stop changing items mid process, do it for new grants not middle process of other grants.
8. Communication is limited to grantees from DFA.
9. Grant agreements given out too late will not be able to apply next year due to threshold.
10. DFA has too much staff turnover, it is too hard on the communities.
11. DFA has too many paper heavy requirements, program is getting too complex to administer. Staff turnover is too hard, hard for communities to get used to new project managers, had 5 project managers in six years.
12. Pay Requests taking too long to process, staff turnover hard, unaware of project manager, lack of communication when new staff take over.
13. Grant agreements took too long.
14. Staff turnover is hard, budget approval took too long to get approved, waited over 3 months.
15. Grant agreements took too long, will not be able to meet threshold due to grant agreements. No problems with Staff but problems with management.
16. Review of contract documents took too long.
17. Very slow with grant agreements, going to miss the window of opportunity of construction because of the snow, won't be able to meet threshold. Pay Request taking too long.
18. Reimbursements taking longer than normal, been waiting over 3 months for payment, the staff turnover is too hard on communities.
19. Reimbursements taking too long.
20. Staff turnover is too hard, get used to someone and then someone else comes in.
21. DFA is unresponsive, e-mailed multiple times and never received a response, grant agreements took too long.
22. DFA is being slower and making excuses about staff and that everyone has to deal with it. Pay Requests taking too long and staff turn over too hard.
23. DFA has not been responsive to Program income amendment.
24. DFA has not been responsive to amendments regarding budgets.

Additionally, MFA has sent in a complaint regarding DFA/LGD inaction and unresponsiveness, as described above in Finding 3.

Regarding NSP3 amendments being delayed, refer to the attached letter sent on June 11, 2013, as to the harm that was caused.

In a letter dated December 31, 2012, DFA/LGD stated to HUD "as we discussed in the December 5 meeting, LGD staff is preparing recommended guidelines for the Community Development Council to insure that applicants for future awards are not negatively impacted by one-time delays in this year's award cycle." Therefore, HUD's request to provide policies and procedures should be considered justifiable since DFA/LGD has had eight (8) months to work on

these policies as stated in the December 31, 2012 letter. Policies and procedures are created to clearly establish rules and regulations to improve the department, which is necessary to the administration of CDBG grants.

In accordance with 24 CFR 570.495, a state's plan for corrective action must be to the satisfaction of HUD. The response provided to HUD in regards to Finding 4 does not address the corrective action identified in the Monitoring Report provided to DFA/LGD.

Finding 4 will remain open until DFA/LGD provides the Local HUD office with written policies and procedures on how the State will eliminate the time elapsing between Grant Agreements, Grant Amendments, and Request for Payments for both the CDBG and NSP Programs. The Request for Payment procedures must be in accordance with the Cash Management Improvement Act of 1990.

Concerns

Concern No. 1

Per State CDBG requirements, all grants must be monitored once a year for the life of the grant. The first monitoring review has to be completed within one year of grant execution. Per review of the DFA/LGD, it was determined that several monitoring reviews were late.

A concern is a deficiency in program performance that is not based on a statutory, regulatory, or other program requirement that may require revision of existing practices and procedures in order to enhance the effectiveness of organization's operations and possibly eliminate future findings. All concerns are advisory and verification of corrective action is not required.

However, since DFA/LGD wants specific instances, they are outlined below (dates identified from the monitoring spreadsheet, not the actual files):

- Quay County (11-C-08) should have been monitored by 9/12/2012, but was not monitored.
- Village of Chama (11-C-09) should have been monitored by 9/19/2011, but was not monitored.
- City of Portales (11-C-10) should have been monitored by 6/18/2012, but was not monitored until 12/26/2012.
- City of Clovis (11-C-13) should have been monitored by 8/16/2012, but was not monitored.
- City of Deming (11-C-23) should have been monitored by 7/1/2012, but was not monitored until 11/16/2012.
- Guadalupe County (11-C-26) should have been monitored by 7/2/2012, but was not monitored.
- Torrance County (11-C-27) should have been monitored by 7/1/2012, but was not monitored.
- City of Hobbs (11-C-31) should have been monitored by 8/2012, but was not monitored until 1/8/2013.
- City of Carlsbad (11-C-33) should have been monitored by 8/2012, but was not

monitored until 10/23/2012.

- Town of Clayton (11-C-36) should have been monitored by 8/18/2012, but was not monitored until 9/13/2012.
- City of Texico (11-C-45) should have been monitored by 8/2/2012, but was not monitored.
- Taos County (11-C-46) should have been monitored by 8/2/2012, but was not monitored until 1/14/2013. .
- Villager of Ft. Sumner (11-C-47) should have been monitored by 7/28/2012, but was not monitored until 12/20/2012.
- De Baca County (11-C-48) should have been monitored by 7/28/2012, but was not monitored until 12/20/2012.

Concern No. 2

Review of the NSP3 program revealed that the State of New Mexico is slow in meeting the LH25 requirement which states that “No less than 25 percent of the funds shall be used to house individuals and families whose incomes do not exceed 50 percent of area median income.” As of the time of the review the State has 13% toward this requirement, with over 86% of the grant drawn. The grant expires in March 2014.

As stated above, all concerns are advisory and verification of corrective action is not required. HUD acknowledges that States throughout the Country will have a difficult time meeting the LH25% requirement if they are solely focusing on single family homes. However, regardless of the difficulty, DFA/LGD is still obligated to meet the required set aside.

Concern No. 3

DFA/LGD has lost most of its management staff that has knowledge and experience with HUD programs. Sam Ojinaga who was the Deputy Director of the Local Government Division was removed after 14 years of experience. Dolores Gonzales, Community Development Bureau Chief, is leaving after 16 years of experience. Barbara Romero, Assistant Bureau Chief, is leaving after 9 years of experience.

On September 25, 2012, HUD was notified that the DFA/LGD's Deputy Director Sam Ojinaga was no longer responsible for the direct oversight of the CDBG and NSP programs. At the time of the review Sam Ojinaga was not an active member of the Community Development Bureau. On October 19, 2012, HUD notified DFA/LGD that we were concerned with recent staff changes. In the response dated November 9, 2012, DFA/LGD responded that it was “aware of the issues and concerns addressed in the letter.” DFA/LGD did not mention that Sam Ojina was a continued valuable source of institutional knowledge at the time the initial concern was raised by HUD. In addition, during the December 5, 2012 meeting held with DFA/LGD, HUD addressed the concerns of staff turnover. Again, HUD was never notified Sam Ojinaga was being utilized on the CDBG and NSP Programs.

HUD is required to determine the degree of grantee risk based on the extent to which the program participant has the capacity to carry out HUD programs according to established requirements. The basis for HUD's rating is derived from information that could be obtained from, but not limited to the following: consideration of the knowledge, skills and ability of program staff and the grantee's administrative capacity to manage the grant, including: eligibility

of activities and recipients; or problems such as: lack of progress in implementing activities, change in staff during the last year, and lack of experience with Federal grants or project activities.

Additionally, audits and related reporting systems can be considered, including but not limited to: Consolidated Plans, Consolidated Annual Performance and Evaluation Reports, Performance and Evaluation Reports, Technical Assistance Plans, Integrated Disbursement Information System, Disaster Recovery Grant Reporting, and other reporting mechanisms. Environmental Compliance, Relocation and Acquisition Policies Compliance, and Flood Insurance Protection Compliance may also be considered. Therefore, based on HUD's experience this concern is not inappropriate, highly subjective, personal, or uncalled for.

HUD recognizes DFA/LGD has lost numerous staff (approximately six Project Managers) and management (approximately three management positions directly overseeing the CDBG and NSP Programs) over the last 2 years. In October of 2012, HUD notified DFA/LGD that our office was willing to set it up with a Technical Assistance trainer to help build capacity to administer the CDBG and NSP programs. HUD did not hear back from DFA/LGD until April of 2013 in regards to the training. Currently HUD is in the process of trying to arrange for a Basic CDBG training for both staff and management.

Conclusion

Until DFA/LGD provides a response that is satisfactory to HUD, the above mentioned findings will remain open and all administrative funds will remain on hold.

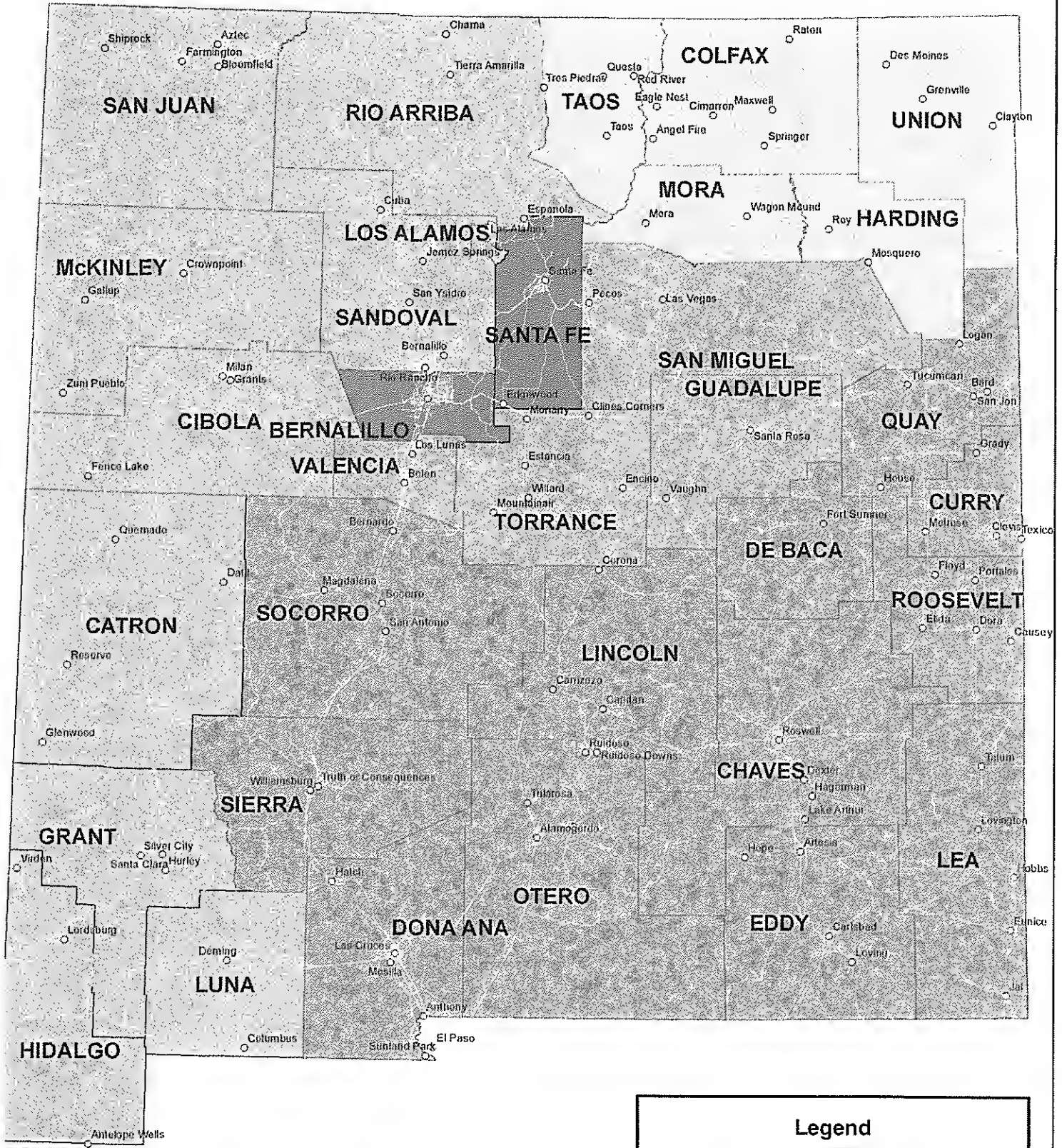
Sincerely,



Frank Padilla
Director

cc: Honorable Susana Martinez, Governor
Honorable Thomas Udall, United States Senator
Honorable Martin Heinrich, United States Senator
Honorable Ben Ray Lujan, United States Representative
Honorable Steve Pierce, United States Representative
Community Development Council

CDBG and Legislative Oversight Areas



Thomas Clifford, Secretary 505-827-4985
 Sam Ojinaga, Acting Director 505-827-8073
 Dolores Gonzales, Bureau Chief 505-827-4972
 Barbara Romero, Asst. Bureau Chief 505-827-4602
 Shawntae Barela, Administrative Assistant 505-827-4950

Legend	
COUNTY	GERALD GARCIA
PROJECT MANAGER	PAUL HERRERA
ARIANA VIGIL	RYAN SERANO
DANIELLE VALDEZ	SIMON SAIZ
FORREST CLANCY	STEPHANIE ROMERO



U.S. Department of Housing and Urban Development
Community Planning and Development

Special Attention of:

All Secretary's Representatives
All State/Area Coordinators
CPD Division Directors

Notice: CPD 06-12

Issued: November 2, 2006
Expires: November 2, 2007

Cross References: 24 CFR 570

SUBJECT: Timely Distribution of State CDBG Funds

I. Purpose

This Notice replaces CPD Notice 94-26 and reiterates HUD's policy and standards for the timely distribution of Community Development Block Grant (CDBG) funds by States. The Notice also provides a summary report of the states' performance in meeting the timely distribution requirements established by regulation for the five program years 2000 through 2004.

II. Statutory and Regulatory Requirements

The Housing and Community Development Act of 1974 as amended [section 104(e)(2)] requires that HUD determine "whether the State has distributed funds to units of general local government in a timely manner." This is the statutory basis for requiring States to meet a timeliness standard in distributing CDBG funds to units of general local government under their jurisdiction.

HUD regulations as established in 24 CFR 570.494, Timely Distribution of Funds by States, define the state's distribution of CDBG funds as timely if "All of the state's annual grant (excluding state administration) has been obligated and announced to units of general local government within 15 months of the state signing its grant agreement with HUD." The exclusion for state administration includes both administrative expenses and technical assistance to local governments and nonprofit program recipients. The regulation also encourages states to obligate and announce 95 percent of funds within 12 months of the state signing its grant agreement with HUD.

Recaptured funds and program income must also be expeditiously obligated and announced in order to meet the timeliness requirement. Special attention should be

DGBS: Distribution: W-3-1

directed to program income to ensure that an amount equal to the amount received each year is budgeted for and committed to local governments.

Definitions:

The term “obligated and announced to” means the date on which a state officially announces the selection and award of grants to its units of general local government by means of any official letter, press release, news media announcement, public notice, or official notice of award that the state may use to notify its localities and citizens that a grant has been awarded. The date of such an announcement will be used to measure compliance with the 15-month time period.

III. Action

Field Offices are responsible for monitoring state compliance with the timely distribution requirement. Field Offices will review the total amount of funds obligated and announced to local recipients from the State CDBG program allocation through the end of the 15-month period. Amounts from prior year allocations, recaptured funds and program income are not included in evaluating basic compliance with distributing the annual allocation. Field Offices will continue to monitor the timely distribution of recaptured funds and program income. To demonstrate compliance with the timely distribution requirement, the total funds obligated and announced should equal the total available after subtracting the allowance for state administration and the technical assistance set-aside. The State and Small Cities Division in HUD Headquarters will review data from LOCCS and the Grants Management Process system (GMP) 15 months after the beginning of each state’s program year and request Field Offices to verify that states have obligated and announced funds in compliance with the timely distribution requirement. Note that current plans for IDIS re-engineering include automating the collection of timely distribution data, which will aid in monitoring compliance with this statutory requirement.

Each state must meet the regulatory requirement for timely distribution. States that do not meet the standard of obligating and announcing 100 percent of their grants within 15 months of the HUD award date are in noncompliance and are subject to a finding. However, the required corrective action should be proportionate to the violation incurred. For example, if less than 1 percent of a state’s grant remains undistributed at 15 months and the evidence suggests that this will be committed quickly, it may be appropriate to require no further action. If the Field Office finds that performance is more deficient than this example or the record shows repeated findings of noncompliance in this area, the Field Office will give the state an opportunity to contest the finding and will request a plan for corrective action. Such plan should address how the state will distribute any outstanding prior year’s balance within the current program year as well as how it will fully distribute the current program year’s funds within the timely distribution period.

If the state’s response or corrective plan is not satisfactory to HUD, the Field Office may take additional action as specified in 24 CFR 570.495. If the state fails to adequately respond to any corrective or remedial actions, the regulations at 24 CFR 570.496 provide

for a hearing and the imposition of additional remedies including financial and civil actions.

IV. Report Results

Information provided by HUD Field Offices shows 25 of 50 states met the standard of obligating and announcing 100 percent of their grants to local governments within 15 months of award of funds by HUD for all 5 years from FY 2000 through FY 2004. Six additional states distributed 99% or more of their grant within 15 months in all 5 years. One state failed to meet the 100 percent requirement in all 5 years. Five states distributed less than 90% of their funds in at least 1 year.

The Attachment to this Notice lists the individual performance by states on the timely distribution of funds at the end of the 15 months for grants awarded in federal fiscal years 2000 through 2004. This attachment includes a table summarizing the number of states by percent of their Grant Amount Under Contract 15 months after award.

Please contact James McCann at (202) 708-1322, Extension 2180, should you have any questions regarding this notice.

Attachment

Notices are available online at:

<http://www.hud.gov/offices/cpd/communitydevelopment/rulesandregs/index.cfm>

State	% of Funds Distributed after 15 months				
	FY2000	FY2001	FY2002	FY2003	FY2004
ALABAMA	99.50%	100.00%	100.00%	100.00%	100.00%
ALASKA	89.72%	100.00%	100.00%	100.00%	100.00%
ARIZONA	100.00%	100.00%	100.00%	100.00%	100.00%
ARKANSAS	100.00%	100.00%	100.00%	100.00%	100.00%
CALIFORNIA	100.00%	100.00%	100.00%	100.00%	100.00%
COLORADO	100.00%	100.00%	121.92%	100.57%	100.27%
CONNECTICUT	100.00%	100.00%	97.60%	100.00%	100.00%
DELAWARE	100.00%	100.00%	100.00%	100.00%	100.00%
FLORIDA	100.00%	100.00%	100.00%	101.15%	98.67%
GEORGIA	98.41%	100.00%	98.85%	99.25%	99.90%
IDAHO	100.00%	100.00%	100.00%	100.00%	100.00%
ILLINOIS	100.00%	100.00%	95.21%	100.00%	100.70%
INDIANA	100.00%	100.00%	100.00%	100.00%	102.44%
IOWA	100.00%	100.00%	100.00%	100.00%	100.00%
KANSAS	98.44%	100.00%	95.09%	100.00%	99.80%
KENTUCKY	100.00%	100.00%	100.00%	100.00%	100.00%
LOUISIANA	100.00%	100.00%	97.55%	100.00%	100.00%
MAINE	100.00%	100.00%	100.00%	101.85%	100.00%
MARYLAND	100.00%	100.00%	100.00%	100.00%	100.00%
MASSACHUSETTS	no report	97.88%	97.29%	100.00%	100.00%
MICHIGAN	95.96%	100.00%	100.00%	85.03%	99.60%
MINNESOTA	99.12%	99.98%	100.00%	100.00%	100.00%
MISSISSIPPI	100.00%	100.00%	100.00%	100.00%	100.00%
MISSOURI	98.62%	100.00%	100.00%	100.00%	100.00%
MONTANA	100.00%	100.00%	100.00%	100.00%	100.00%
NEBRASKA	100.00%	100.00%	100.00%	100.00%	100.00%
NEVADA	100.00%	100.00%	99.95%	100.00%	98.24%
NEW HAMPSHIRE	100.00%	100.00%	no report	100.00%	100.00%
NEW JERSEY	95.15%	99.09%	100.00%	100.00%	100.00%
NEW MEXICO	100.00%	100.00%	100.00%	99.71%	99.93%
NEW YORK	100.00%	100.00%	100.10%	90.03%	79.84%
NORTH CAROLINA	100.00%	100.00%	100.00%	100.00%	100.00%
NORTH DAKOTA	100.00%	100.00%	100.00%	100.00%	100.00%
OHIO	98.22%	99.70%	97.84%	99.16%	99.20%
OKLAHOMA	100.00%	100.00%	100.00%	100.00%	100.00%
OREGON	100.00%	100.00%	100.00%	100.00%	100.00%
PENNSYLVANIA	100.00%	100.00%	100.00%	100.00%	100.00%
PUERTO RICO	100.00%	100.00%	100.00%	100.00%	100.00%
RHODE ISLAND	100.00%	100.00%	100.00%	98.76%	98.67%
SOUTH CAROLINA	100.00%	100.00%	88.35%	92.73%	100.00%
SOUTH DAKOTA	100.00%	100.00%	27.86%	63.42%	81.65%
TENNESSEE	100.00%	100.00%	100.00%	100.00%	100.00%
TEXAS	100.00%	100.00%	100.00%	100.00%	100.00%
UTAH	100.00%	100.00%	100.00%	100.00%	100.00%
VERMONT	99.14%	99.48%	100.00%	100.00%	100.00%
VIRGINIA	100.00%	100.00%	100.00%	100.00%	100.00%
WASHINGTON	100.00%	100.00%	100.00%	100.00%	100.00%
WEST VIRGINIA	100.00%	100.00%	100.00%	100.00%	100.00%
WISCONSIN	100.00%	100.00%	98.48%	100.00%	100.00%
WYOMING	99.83%	100.00%	99.68%	98.84%	99.97%

Percentage distribution achieved by states by FY:					
	2000	2001	2002	2003	2004
100%	38	43	37	41	38
99%	4	6	2	4	7
95-98%	6	1	8	1	3
90-94%	0	0	0	2	0
80-89%	1	0	1	1	1
Under 80%	0	0	1	1	1
No data	1	0	1	0	0
	50	50	50	50	50
Achieved 100% standard all 5 years:					25
Failed 100% standard in at least 1 yr:					25
Failed 100% standard all 5 years:					1
Distributed under 90% in at least 1 yr:					5
Distributed under 90% all 5 years:					0

Note: Some states have included Program Income in their reports resulting in amounts distributed greater than 100%.
Shaded entries are below 100%. Shaded entries shown as 100% are actually slightly less but display as 100% due to rounding.

Herrera, Stephanie M

From: Herrera, Stephanie M
Sent: Tuesday, April 16, 2013 11:32 AM
To: 'Slown, Jolene M, DFA'
Cc: 'Gonzales, Dolores C., DFA'; Padilla, Frank; 'Gleason, Ryan, DFA'; 'Jackson, Rebecca, DFA'; 'Saiz, Simon P, DFA'; Gonzales, Monica M
Subject: RE: NSP Monitoring

Hi Jolene,

Now that the NSP Staff has been informed of the confusion with the "Substantial Amendment" and "Grant Agreement Amendment," can you please answer the questions that were asked in my original e-mail.

- Can you please provide me a status as to where the State is with NSP1 & NSP3?
- Has the State decided to transfer NSP to MFA, if so by when?
- Has the State completed an Amendment for the City of Albuquerque to use program income, if so, when will it be completed? *(the original request to use program income from the City of Albuquerque was submitted over a year and a half ago).*
- If the State has decided to retain the program income, can you please let me know when you plan on having it re-distributed to another area of greatest need?

Thanks,

Stephanie M. Herrera

Community Planning and Development Representative
Office of Community Planning and Development

Department of Housing and Urban Development
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Fax: (505) 346-6604
Stephanie.M.Herrera@hud.gov

From: Slown, Jolene M, DFA [mailto:JoleneM.Slown@state.nm.us]
Sent: Friday, April 12, 2013 4:55 PM
To: Herrera, Stephanie M
Cc: Gonzales, Dolores C., DFA; Padilla, Frank; Gleason, Ryan, DFA; Jackson, Rebecca, DFA; Saiz, Simon P, DFA
Subject: RE: NSP Monitoring

Good Afternoon Stephanie,

In your follow up email sent 4/10/13, you requested clarification regarding the City of Albuquerque and its use of program income. To answer your question, yes, we will need to execute a grant agreement amendment with the City of Albuquerque to allow for the use of program income.

We acknowledge the fact that there is some confusion in the nomenclature of the amendments with our sub-grantees and have already addressed that issue with NSP staff. The following is a brief explanation of why there was confusion with the "grant agreement amendment" title and the "substantial amendment" title, what our processes were in the past for amending our agreements, and what our processes will be moving forward.

On March 19, 2013, the City requested technical assistance in reference to requesting additional administration funds from program income received. The City was informed that in order to process this request, it would need to submit the "Substantial Amendment" (State of New Mexico Action Plan Substantial Amendment) via email, identifying the requested changes with an assigned color, as had been done in the past. Because of lost data at the City offices due to server issues, the City did not have electronic versions of previous "Substantial Amendments" which was provided to them.

The most recent budget adjustments have been conducted as follows: Once DFA/LGD receives this "Substantial Amendment" request from the City, it is reviewed to verify that a substantial amendment according to 24 CFR 91.505 is or is not required. Once the amendment is approved by DFA/LGD it is then emailed to the Albuquerque HUD Office for approval. Once this has been approved by HUD, NSP staff would make the budget adjustment in DRGR.

This process was put into place on 7/1/10 in amendment #3 to the City's grant agreement. This was due to the 18 month obligation deadline and expenditure deadline approaching. Grant agreement amendment #3 did away with the redundancy and lengthy process of having the City submit the "Substantial Amendment," and then submitting a grant agreement amendment request upon approval of the "Substantial Amendment."

Each of our sub grantees' agreements were amended to incorporate this same process.

DFA/LGD is currently awaiting the "Substantial Amendment" to be submitted by the City incorporating the use of additional administration funds from program income received, which will be reviewed by NSP staff. We do not expect it to require the procedures in 24 CFR 91.505 and if that determination is made it will be submitted as soon as possible to HUD for review.

As stated before, NSP staff has been informed of the confusion with the "Substantial Amendment" title. Moving forward, we will put into place the necessary processes to amend our agreements with our sub grantees as well as review their requests to ensure the requirements stated in 24 CFR 91.505 are followed.

If you require any additional information please feel free to contact me.

Jolene M. Slown

Deputy Director
Local Government Division
Department of Finance and Administration
Bataan Memorial Building, Rm 202
Santa Fe, NM 87503

From: Herrera, Stephanie M [<mailto:Stephanie.M.Herrera@hud.gov>]
Sent: Wednesday, April 10, 2013 10:12 AM
To: Slown, Jolene M, DFA
Cc: Gonzales, Dolores C., DFA; Padilla, Frank; Gleason, Ryan, DFA; Jackson, Rebecca, DFA
Subject: RE: NSP Monitoring

Good Morning Jolene,

Can you please clarify a few items for me, in your e-mail below you mention that the City of Albuquerque asked for technical assistance in reference to the Substantial Amendment for use of program income. According 24 CFR 91.S05 (a) Amendments to the plan. The jurisdiction shall amend its approved plan whenever it makes one of the following decisions: (1) To make a change in its allocation priorities or a change in the method of distribution of funds. (2) To carry out an activity, using funds from any program covered by the consolidated plan (including program income), not previously described in the action plan; or (3) To change the purpose, scope, location, or beneficiaries of an activity. The State of New Mexico identified and requested a waiver with the original NSP1 Substantial Amendment that requested that rental program income be retained in the individual project in order to continue to long term financial feasibility and any program income generated from the Sale of NSP properties be allowed to be retained to continue financing properties. Therefore, a Substantial Amendment is not required at this time to use program income generated by the City of Albuquerque for NSP1 since the original Substantial Amendment that was approved by HUD acknowledged that program income generated would be used to continue financing NSP Properties. What I believe you meant to say is the State planning on completing a Grant Agreement Amendment? If this is correct please let me know.

In addition, you mention that you are waiting for the Amendment from the City of Albuquerque to review, approve and send to HUD, did the State already create and send a grant amendment (or substantial amendment) to the City of Albuquerque to review and send back to the State? Or is the City creating the a grant amendment (or substantial amendment) and sending to the State for review?

Thanks for clarifying the items above.

Stephanie M. Herrera

Community Planning and Development Representative
Office of Community Planning and Development

Department of Housing and Urban Development
500 Gold Avenue SW, Suite 7301
P.O. Box 906
Albuquerque, NM 87103-0906
Ph: (505) 346-7341
Fax: (505) 346-6604
Stephanie.M.Herrera@hud.gov

From: Slown, Jolene M, DFA [<mailto:JoleneM.Slown@state.nm.us>]

Sent: Tuesday, April 09, 2013 9:30 AM

To: Herrera, Stephanie M

Cc: Gonzales, Dolores C., DFA; Padilla, Frank; Gleason, Ryan, DFA; Jackson, Rebecca, DFA

Subject: RE: NSP Monitoring

Good Morning Stephanie –

Thank you for your questions. Since the monitoring review involved the NSP1 program, be advised that the City of Albuquerque asked for technical assistance in reference to the Substantial Amendment for use of the program income. DFA/LGD provided that assistance. We are waiting for the Amendment from the City of Albuquerque to review, approve and send to HUD.

Thank you -

Jolene

From: Herrera, Stephanie M [<mailto:Stephanie.M.Herrera@hud.gov>]
Sent: Friday, April 05, 2013 12:24 PM
To: Slowen, Jolene M, DFA
Cc: Gonzales, Dolores C., DFA; Padilla, Frank
Subject: NSP Monitoring

Good Morning Jolene,

As part of the Monitoring review, can you please provide me a status as to where the State is with NSP1 & NSP3, please include if the State has decided to transfer NSP to MFA, if so by when? Has the State completed an Amendment for the City of Albuquerque to use program income? If so, when will it be completed? If the State has decided to retain the program income can you please let me know when you plan on having it re-distributed to another area of greatest need?

Thanks,

Stephanie M. Herrera

Community Planning and Development Representative
Office of Community Planning and Development

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Stephanie.M.Herrera@hud.gov

Herrera, Stephanie M

From: Romero, Stephanie M
Sent: Wednesday, January 23, 2013 3:43 PM
To: "jolenem.slowen@state.nm.us" (jolenem.slowen@state.nm.us)
Cc: Padilla, Frank
Subject: RE: Environmental Review

Jolene,

Per our conversation this e-mail should have said "can" conduct the environmental review for the Section 108 Loan guarantee program. 24 CFR Section 58.11 (d) states "If a responsible entity, other than a recipient, objects to performing an environmental review, or if HUD determines that the responsible entity should not perform the environmental review, HUD may designate another responsible entity to conduct the review in accordance with this part or may itself conduct the environmental review in accordance with the provisions of 24 CFR part 50". Therefore, HUD has given the State of New Mexico the Authority to conduct the environmental review in accordance with 24 CFR part 58, if the State chooses to do so.

If you have any questions please don't hesitate to ask.

Thanks,
Stephanie

From: Romero, Stephanie M
Sent: Wednesday, January 23, 2013 11:46 AM
To: "jolenem.slowen@state.nm.us" (jolenem.slowen@state.nm.us)
Cc: Padilla, Frank
Subject: Environmental Review

Good Morning Jolene,

After review of the regulations found at 24 CFR 570.704(d), our office has determined the State shall still conduct the environmental review for the Section 108 Loan Guarantee Program, as discussed on the conference call yesterday. If the State does not have the capacity to conduct the environmental review in accordance with 24 CFR part 58. Please notify our office immediately.

Thanks,

Stephanie Marie Herrera

Community Planning and Development Representative
Office of Community Planning and Development

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Padilla, Frank

From: Debbie Davis <Ddavis@housingnm.org>
Sent: Monday, July 08, 2013 11:13 AM
To: Padilla, Frank
Cc: Joseph Montoya
Subject: Concerns regarding DFA

Frank – I would like to bring to your attention the problems we have been having with DFA and our NSP contract. First, DFA staff are very non-responsive to MFA. In fact, they will not return phone calls made to them. The only responses we receive are from the contractor for DFA, Charles Kelley.

Second, beginning in March of this year, I started speaking with Charles Kelley regarding our NSP1 contract that was going to expire on June 20, 2013. We had several conversations and he assured me that he had been reminding DFA that we needed to have an amendment or extension to our contract. On June 19, 2013, Sarah Lopez e-mailed and asked me for a copy of the JPA between MFA and DFA because she could not locate one. Copies were sent. On June 24 she asked for copies of the attachments, which were sent to her.

We have not received anything further from DFA, and our contract expired on June 20, 2013. Our program is not completed, as we have two homes with NSP fund commitments (one just purchased, one with sale to a homebuyer pending), and we have one more that is in limbo until we get our contract extension. The purchase agreement for that property has a 7/19/13 closing date. In addition, our external auditors, including the state auditor, will be auditing NSP this year. They are starting today, and we need to be able to assure them that we will have a contract extension, backdated to June 20, 2013, as soon as possible.

The question on the contract was e-mailed this morning to DFA. We requested that they respond via return e-mail and send us an update on the contract amendment, with an assurance on the effective date of June 20, 2013, and when we might expect to receive the extension.

I do not know what else we can do about this contract matter. Thanks.



MFA Debbie Davis, Programs & Initiatives Manager
New Mexico Mortgage Finance Authority
Direct Phone: 505.767.2221
Fax: 505.242.2766

www.housingnm.org

MFA - Housing New Mexico's people since 1975.

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U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
500 Gold Avenue SW, Suite 7301, Albuquerque, New Mexico 87102
P.O. Box 906, Albuquerque, New Mexico 87103-0906

NEW MEXICO STATE OFFICE, REGION VI
OFFICE OF COMMUNITY PLANNING AND DEVELOPMENT

(505) 346-6453
TTY 1.800.877.8339

June 11, 2013

Thomas E. Clifford
Cabinet Secretary
Department of Finance and Administration
Bataan Memorial Building RM 202
Santa Fe, New Mexico 87501

Dear Mr. Clifford:

The U.S. Department of Housing and Urban Development (HUD) is in receipt of e-mails (see attached) from the Department of Finance and Administration, Local Government Division (DFA/LGD), Neighborhood Stabilization Program-3 (NSP3) contractor, the Kaspia Group, Inc. (Kaspia). The e-mails express the concern that several families are at risk of homelessness as a direct result of the inaction of DFA/LGD in providing Kaspia an amendment #4 to their grant agreement.

HUD addressed the issue of the State of New Mexico being untimely in distributing NSP3 program income (Finding #2) in the monitoring letter dated May 9, 2013. The monitoring response dated June 10, 2013 from DFA/LGD stated "it is unclear how homebuyers have been harmed by the fact that a fourth amendment to the Developer agreement has not been finalized." You can see from the attached e-mails how homebuyers have been harmed directly by the amendment to the Developer agreement not being finalized.

The monitoring response from DFA/LGD informed HUD that DFA/LGD is "in the process of finalizing amendments for both the NSP-1 and NSP-3". Addressed in the monitoring letter from HUD to DFA/LGD, the following corrective action was required of DFA "The Program Income Amendment must be issued within the next 30 days and a copy of the amendment must be provided to HUD." Therefore, HUD is requesting that DFA/LGD immediately execute and provide HUD with a copy of the amendment in accordance with the Corrective Action outlined in the Monitoring letter to DFA/LGD to avoid a situation where families in the State of New Mexico become homeless.

If you have any questions, please don't hesitate to contact me at [REDACTED]

Sincerely,


Frank Padilla
Director

Cc. Ryan Gleason, DFA/LGD Director
Jolene Slowen, DFA/LGD Deputy Director
Keith Gardner, Governor Susana Martinez's Chief of Staff

Enclosure: Kaspia's e-mails

Herrera, Stephanie M

From: Padilla, Frank
Sent: Tuesday, June 11, 2013 9:09 AM
To: Herrera, Stephanie M
Subject: Fw: NSP3 delays

Importance: High

From: Aaron Lohmann [mailto:Aaron@kaspiagroup.com]
Sent: Monday, June 10, 2013 05:37 PM
To: Gonzales, Monica M; Padilla, Frank
Subject: FW: NSP3 delays

PLEASE SEE THE EMAIL BELOW FROM ALISON SHAFER; ONE OF THE REALTORS SELLING THE NSP HOMES.

FYI...I want to make you all aware that due to the State's continued lack of action on NSP3, Kaspia is now facing potential liability and the buyers are left without homes in many cases. This issue is escalating fast! Any help or guidance your department can offer would be greatly appreciated not only by Kaspia but by the homebuyers that we already have under contract. Two of our contracted homebuyers are scheduled to close this week! These families will literally be left homeless since they have already given notice at their current residences, and Kaspia and the State will be in violation of the purchase contracts in place. We are at a total loss as to why this is happening or how this is even acceptable to the State or HUD.

For the record, we still have not received any response from the State to our numerous requests for a budget amendment.

Our corporate counsel, Robert Simon will be forwarding this communication to the State along with another letter requesting amendment #4 tomorrow (6/11/13).

Thank you,

Aaron Lohmann | The Kaspia Group, Inc
President/CEO

3700 Rio Grande NW Suite 5
Albuquerque, NM 87107

www.KaspiaGroup.com | A Community Development Corp.

From: "alisonshafernm@aol.com" <alisonshafernm@aol.com>
Date: Monday, June 10, 2013 5:00 PM
To: Aaron Lohmann <aaron@kaspiagroup.com>
Cc: Trista King <Trista@kaspiagroup.com>, Robert Grebe <robert@kaspiagroup.com>, Sheryl McCrary <Sheryl5Homes@Comcast.net>
Subject: NSP3 delays

Hello Aaron,

After our informational meeting today concerning the ongoing requests from Kaspia to the State for funding for the closings of the NSP3 homes under contract, I had a few thoughts:

The refusal of the state to provide the necessary, contractually agreed to funding for Kaspia to close certain NSP3 properties will cause Kaspia to default on contractual obligations leaving Kaspia and the State of NM open to lawsuits demanding specific performance or for breach of contract.

The State has sent written approval for these buyers. How can the buyers be made to understand that now, after all they have done to purchase these homes, the deal may fall through because of bureaucratic complications?

The buyers of these homes enter into the purchase agreement contract in good faith and Kaspia as the seller agrees to and accepts the contract with that same good faith. The possibility that some of these transactions may not close due to funding issues will not set well with the buyers nor their Realtors. These buyers are depending on everyone to fulfill their contractual obligations so that they can get on with the plans they have been making for weeks of purchasing and moving into their new home. This program's purpose is to facilitate the purchase of these renovated properties by folks who really need the assistance, while hopefully bringing some stabilization to these targeted neighborhoods. As a Realtor, my major concern is for the principals involved, both the buyer and seller. If transactions do not close due to inaction by the State it will mean a black eye for the whole program, including the State, Kaspia, and perhaps Omni Village Realty. In a profession where one is judged on performance, a situation such as this could damage the reputation of Omni Village Realty and its associates. I definitely don't want that to happen...we take great care to provide the best service possible to our customers, to be honest and truthful, deal in good faith, and to build a good reputation which should not be besmirched by the actions of another entity.

It also is possible that the "locks" on the loans for these homes may expire, and with the interest rates rising, buyers who are currently qualified to purchase may find they can no longer afford to do so, especially any that fall into the "20%" assistance bracket since they would probably be those most likely to be affected.

I don't have to tell you that additionally, these homes that are sitting vacant are in danger of being broken into and vandalized. The sooner they are occupied, the better.

Yet another issue is that of the homes we currently have "active" in the MLS and on the market. We will need to make a decision very soon as to whether to put them into "temporary withdraw" status since Kaspia at this time apparently cannot sign a purchase agreement in good faith.

I have notified the selling Realtors for the following properties that there may be an indefinite delay in closing:

844 Loma Hermosa, scheduled to close 6/14/13


10801 Rio Puerco, scheduled to close 6/13/13 but buyers will be requesting an extension (which the seller cannot in good faith sign since the funding is not available to Kaspia for closing). I also represent the buyers on this transaction.

1161 Jenaro, scheduled to close 6/27/13.

I urge you to inform the State that we are looking at a myriad of problems, and perhaps legal action if it does not live up to its contractual obligations.

I am hopeful that all this will soon be rectified so that we can fulfill obligations, make buyers happy, and get on with the business of trying to improve the state of the community through home ownership.

Please let me know if there is anything I can do to further the cause.

Sincerely,
Alison Shafer
Associate Broker
Omni Village Realty


Herrera, Stephanie M

From: Padilla, Frank
Sent: Tuesday, June 11, 2013 9:07 AM
To: Herrera, Stephanie M
Subject: Fw: NSP3 Funding

Importance: High

From: Aaron Lohmann [mailto:Aaron@kaspia.com]
Sent: Monday, June 10, 2013 05:44 PM
To: Gonzales, Monica M; Padilla, Frank
Subject: FW: NSP3 Funding

Here's another one...Please read Sheryl's email below.
Thank you for your consideration,

Aaron Lohmann |The Kaspia Group, Inc
President/CEO

3700 Rio Grande NW Suite G
Albuquerque, NM 87107

www.kaspia.com | A Community Development Corp.

From: Sheryl McCrary <SherylHomes@Comcast.net>
Reply-To: Sheryl McCrary <SherylHomes@Comcast.net>
Date: Monday, June 10, 2013 5:41 PM
To: Aaron Lohmann <aaron@kaspia.com>
Subject: NSP3 Funding

I am very concerned that we have not received funding for the program. I have 4 contracts for closings on our NSP homes. The closing dates are looming closer and closer. I have another offer, but I am afraid to have you accept it! Should I take homes off the market?

As your agent, I am fearful that Kaspia could be sued by the buyer for not closing these homes. The Purchase Agreement clearly states that not closing would be grounds for a lawsuit, called Specific Performance. I also do not want Kaspia or the program to get a bad recommendation. Realtors and people do talk. I have spent a lot of time speaking to realtors and people about the virtues of this program. I hate for that to go down the toilet. We have built a good reputation and put out a superior product while helping people who really need a home.

I am fearful that the buyers who are waiting for that close date to come will have to spend additional money they don't have on rent or motel. These people don't have that kind of money! Remember they are low income! Most, give notice to the landlord and have to be out by the agreed time. If we don't close, where do they go?

When the offers were written, they were written in good faith that the closing would occur in a timely manner. The State has had these contracts all along, why are they stalling with releasing funding? The homes are sitting there finished, ready for the new owners. The risk of being vandalized is high, and Kaspia will have to foot the bill for that.

My buyer for 1161 Jenaro Rd SW has given her landlord notice. He already has someone lined up to move in. We are due to close June 27th. What am I to tell her? It's going to break her heart! For once in her life something good was happening to her, a real miracle. Now, I have to tell her that it's not happening because someone can't take a moment to do the funding!

SHERYL MCCRARY

Omni Village Realty

3700 Rio Grande Blvd NW Suite 6

Albuquerque, NM 87107

